

CITY OF LA VISTA
MAYOR AND CITY COUNCIL REPORT
JULY 06, 2010 AGENDA

Subject:	Type:	Submitted By:
DISCUSSION — LB 1018	RESOLUTION ORDINANCE ◆ RECEIVE/FILE	BRENDA S. GUNN CITY ADMINISTRATOR

SYNOPSIS

During the 2010 session of the Nebraska Legislature, Legislative Bill 1018 adopting the Nebraska Advantage Transformational Tourism and Redevelopment Act (NATTRRA) was approved and will go into effect on July 15, 2010. Voter approval is required in order to grant the Governing Body authority to utilize this economic development tool. This item has been placed on the agenda to consider placing this on the November 2010 general election ballot.

FISCAL IMPACT

Presently, there is no fiscal impact other than election costs of \$2,000. This is asking voters to give the Governing Body authority to refund a portion ($\leq 1.5\%$) of the local sales tax generated by a project, for tangible costs associated with developing major tourism attractions and redeveloping aging areas of the community.

RECOMMENDATION

A motion to direct the preparation of a ballot question.

BACKGROUND

Recognizing the need for additional economic development tools, the United Cities of Sarpy County worked with Senator Cornett and other members of the Nebraska Legislature to pass the Nebraska Advantage Transformational Tourism and Redevelopment Act (NATTRRA) which will go into effect on July 15, 2010.

The purpose of the legislation is to develop major tourism attractions; redevelop areas that are suffering the effects of age; promote job creation and/or retention; and attract and retain Nebraska's best and brightest young people. Specifically, with voter approval, municipalities would be allowed to refund a portion of the local sales tax ($\leq 1.5\%$) generated by a project for the tangible costs of developing major tourism attractions and redeveloping aging areas of the community. If approved, the Governing Body would be granted authority for ten years to direct the tax toward specific projects. There are minimum levels of investment required in order to qualify for said incentive and parameters regarding project eligibility,

This is historic legislation as in the past incentives were not allowed for projects containing a retail component. Similar to the authority granted by voters in 2003 to adopt the Local Option Municipal Economic Development Act (*which was subsequently utilized to facilitate the JQH Embassy Suites/La Vista Conference Center/Marriott Courtyard project*), the voters would be giving the City Council authority to utilize this economic development tool to attract a project determined to be of significant benefit to the City. The minimum investment for a new development is \$50 million and \$10 million for redevelopment.

Proceeding with the ballot initiative at this time is recommended so we can expand our economic development toolbox in order to compete for redevelopment and tourism type “destination” development projects. We must be capable of moving quickly when an opportunity arises.

Should the Mayor and City Council choose to move forward with placing this question on the November 2010 General Election ballot, the recommended timeline would be:

- Council directs the Election Commissioner to place question on the November ballot (Resolution) August 3, 2010
- Deadline to have resolution to Election Commissioner September 1, 2010
- Local Option Sales Tax on the Ballot (Primary Election) November 2, 2010

** If the voters do not approve this authority, the City could not place the question on the ballot for another 23 months.*

A copy of LB 1018 is in your packet for review.

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LEGISLATURE OF NEBRASKA

ONE HUNDRED FIRST LEGISLATURE

SECOND SESSION

LEGISLATIVE BILL 1018

FINAL READING

Introduced by Cornett, 45; Coash, 27.

Read first time January 20, 2010

Committee: Revenue

A BILL

1 FOR AN ACT relating to revenue and taxation; to amend section
2 18-2506, Reissue Revised Statutes of Nebraska; to adopt
3 the Nebraska Advantage Transformational Tourism and
4 Redevelopment Act; to restrict the use of municipal
5 initiative and referendum on action permitted by the act;
6 and to repeal the original section.
7 Be it enacted by the people of the State of Nebraska,

1 Section 1. Sections 1 to 35 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, delivery persons,
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. In
6 addition, the development must offer a unique food or experience
7 concept not found in this state within (1) the same metropolitan
8 statistical area as determined by the United States Office
9 of Management and Budget and (2) a fifty-mile radius of the
10 development.

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

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

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

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

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

22 Sec. 15. Mixed-use project means a facility containing a
23 minimum of fifty thousand square feet. The project must include at
24 least two vertical stories of usable or leasable space and contain
25 a minimum of two uses, such as restaurant, office, retail, or

1 residential, not including parking. Retail stores shall occupy no
2 more than forty percent of the total gross usable area.

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

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

22 Sec. 18. (1) For a tourism development project, qualified
23 business means any business engaged in:
24 (a) Cultural development;
25 (b) Historical redevelopment;

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

- (a) Cultural development;
- (b) Historical redevelopment;
- (c) Recreation facilities;
- (d) Entertainment destination centers;
- (e) Mixed-use projects;
- (f) Lodging;
- (g) Full-service restaurants or destination dining;
- (h) Residential development;
- (i) Retail development;
- (j) Structured parking;
- (k) Tourism attraction;
- (l) Nebraska crafts and products center; or
- (m) Any combination of the activities listed in this

25 Sec. 19. (1) Qualified property means any tangible

1 property of a type subject to depreciation, amortization, or
2 other recovery under the Internal Revenue Code of 1986, as amended,
3 or the components of such property, that will be located and used
4 at the project.

5 (2) Qualified property does not include (a) aircraft,
6 barges, motor vehicles, railroad rolling stock, or watercraft or
7 (b) 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, amusement parks, and related support
14 amenities.

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

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

1 the Internal Revenue Code of 1986, as amended.

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

6 Sec. 24. (1) Taxpayer means any person subject to sales
7 and use taxes under the Nebraska Revenue Act of 1967 and subject to
8 withholding under section 77-2753 and any corporation, partnership,
9 limited liability company, cooperative, including a cooperative
10 exempt under section 521 of the Internal Revenue Code of 1986,
11 as amended, limited cooperative association, or joint venture that
12 is or would otherwise be a member of the same unitary group, if
13 incorporated, that is subject to such sales and use taxes or such
14 withholding.

15 (2) Taxpayer does not include a political subdivision or
16 an organization that is exempt from income taxes under section
17 501(a) of the Internal Revenue Code of 1986, as amended, or any
18 partnership, limited liability company, cooperative, including a
19 cooperative exempt under section 521 of the Internal Revenue Code
20 of 1986, as amended, limited cooperative association, or joint
21 venture in which political subdivisions or organizations described
22 in section 501(c) or (d) of the Internal Revenue Code of 1986, as
23 amended, hold an ownership interest of ten percent or more.

24 Sec. 25. Tourism attraction means a place of interest
25 where tourists visit, typically for the inherent or exhibited

1 cultural value, historical significance, natural or built beauty,
2 or amusement opportunities, such as historical places, monuments,
3 zoos, aquaria, museums, art galleries, botanical gardens,
4 skyscrapers, parks, forests, natural recreation areas, theme parks,
5 ethnic enclaves, historic transportation, and landmarks.

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

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

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

1 direct the tax. If a majority of those voting on the question
2 are opposed, the governing body shall not so direct the tax. Once
3 approved, the municipality may exercise the powers granted by the
4 act for a period of ten years. Any election under this section
5 shall be conducted in accordance with the procedures provided in
6 the Election Act.

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

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

18 (2) The application shall contain:

19 (a) A written statement describing the plan of employment
20 and investment for a qualified business in this state;
21 (b) Sufficient documents, plans, and specifications as
22 required by the municipality to support the plan and to define a
23 project and a feasibility study. The plans shall include evidence
24 that demonstrates that the project is feasible only with the
25 incentives provided by the act;

1 (c) A nonrefundable application fee of two thousand five
2 hundred dollars; and

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

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

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

15 (4) The municipality shall conduct an internal review
16 of the feasibility study. If the municipality determines that
17 the feasibility study demonstrates that the project can meet the
18 requirements of the act, then the municipality shall conduct its
19 own study with an independent third party, the cost of which shall
20 be paid in full by the applicant. The cost of the study required
21 under this subsection shall be in addition to the fee required
22 under subsection (2) of this section. The purpose of the study is
23 to verify or nullify the results of the feasibility study provided
24 by the applicant. Additionally, the study shall examine the ability
25 of the applicant to meet the requirements of the act. The study

1 shall make a recommendation to the municipality on whether to
2 proceed with the project or not.

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

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

23 (a) The levels of employment and investment required by
24 the act for the project;
25 (b) The time period under the act in which the required

1 levels must be met;

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

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

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

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

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

1 and taxpayer may amend the agreement.

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

4 Sec. 31. (1) Applicants may qualify for incentives under
5 the Nebraska Advantage Transformational Tourism and Redevelopment
6 Act as follows:

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

13 (ii) The investment requirement for a tourism development
14 project is as follows:

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

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

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

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

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

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

17 (b) Redevelopment project, investment in qualified
18 property of at least ten million dollars and a net employment
19 increase to the state, except that for a redevelopment project in
20 a municipality within a county in which the net taxable sales in
21 the preceding calendar year were less than one hundred million
22 dollars, the requirements shall be investment in qualified property
23 of at least seven million five hundred thousand dollars and a net
24 employment increase to the state. Net employment from the project
25 shall be determined by comparing the impact of the project to the

1 impact of not having the project. Agreements may be executed with
2 regard to completed project applications.

3 (2) In addition to the requirements of subsection (1) of
4 this section:

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

7 (b) The applicant shall demonstrate that the project is
8 not feasible but for the incentives provided under the act; and

9 (c) The applicant shall demonstrate that the project
10 has conditional financing prior to completion of the application
11 and final approval of financing before final approval of the
12 application by the municipality.

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

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

20 (i) Qualified property used as a part of the project;
21 (ii) Property, excluding motor vehicles, based in this
22 state and used in both this state and another state in connection
23 with the project except when any such property is to be used for
24 fundraising for or for the transportation of an elected official;
25 (iii) Tangible personal property by the owner of the

1 improvement to real estate that is incorporated into real estate as
2 a part of a project; and

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

6 (b) Except as provided in subdivision (c) of this
7 subsection for redevelopment projects, a refund of local option
8 sales tax up to a rate of one and one-half percent paid on all
9 types of purchases on which the local option sales tax is levied
10 within the boundaries of the project during each year of the
11 entitlement period in which the taxpayer meets the requirements
12 contained in the agreement for the project; and

13 (c) For a redevelopment project, if the taxpayer has been
14 collecting local option sales tax for more than twenty-four months
15 prior to completion of the project, a refund of the increase in
16 local option sales tax revenue collected by the taxpayer within the
17 boundaries of the project each calendar year after the completion
18 of the project.

19 Sec. 32. (1) The Department of Revenue shall contract
20 with an independent consultant to review each project under the
21 Nebraska Advantage Transformational Tourism and Redevelopment Act
22 every fifth year following the effective date of this act. The
23 review shall be paid for by each project owner. The review shall
24 examine patronage from outside the metropolitan statistical area as
25 defined by the United States Office of Management and Budget in

1 which the project is located, sales data, and employment records
2 to determine the project owner's continued compliance with the
3 provisions of the act. The project owner shall comply with the
4 provisions of this subsection or be subject to the recapture
5 provisions of this section. If it is determined that the project
6 owner was not in compliance, the municipality may recapture all or
7 a portion of the incentives provided under the act.

8 (2) If the taxpayer fails to meet the requirements
9 contained in the agreement for the project either by the end of the
10 fourth year after the end of the year the application was submitted
11 or for the entire entitlement period, all or a portion of the
12 incentives provided under the act shall be recaptured on behalf of
13 the municipality.

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

18 (4) Any amounts due under this section shall be
19 recaptured notwithstanding other allowable incentives and shall not
20 be subsequently refunded under any provision of the act unless the
21 recapture was in error.

22 (5) The recapture required by this section shall not
23 occur if (a) the failure to maintain the required levels of
24 employment or investment was caused by an act of God or national
25 emergency or (b) the cost of recapture would exceed the amount to

1 be recaptured in the opinion of the municipality.

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

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

14 (2) The acquiring taxpayer, as of the date of
15 notification of the municipality of the completed transfer, shall
16 be entitled to any future incentives allowable under the act.

17 (3) The acquiring taxpayer shall be liable for any
18 recapture that becomes due after the date of the transfer for the
19 repayment of any incentives received either before or after the
20 transfer.

21 Sec. 34. Interest shall not be allowable on any refunds
22 paid because of incentives earned under the Nebraska Advantage
23 Transformational Tourism and Redevelopment Act.

24 Sec. 35. The Nebraska Advantage Transformational Tourism
25 and Redevelopment Act may not be used for the construction or

1 financing of a stadium or for support facilities for a stadium.

2 Sec. 36. Section 18-2506, Reissue Revised Statutes of
3 Nebraska, is amended to read:

4 18-2506 Measure shall mean means an ordinance, charter
5 provision, or resolution which is within the legislative authority
6 of the governing body of a municipal subdivision to pass, and
7 which is not excluded from the operation of referendum by the
8 exceptions in section 18-2528. Measure does not include any action
9 permitted by the Nebraska Advantage Transformational Tourism and
10 Redevelopment Act.

11 Sec. 37. Original section 18-2506, Reissue Revised
12 Statutes of Nebraska, is repealed.