LEGISLATURE OF NEBRASKA

ONE HUNDREDTH LEGISLATURE

SECOND SESSION

LEGISLATIVE BILL 895

Introduced by Janssen, 15; Adams, 24; Burling, 33; Dierks, 40; Gay, 14; Langemeier, 23; Preister, 5; White, 8; at the request of the Governor.

Read first time January 11, 2008

Committee: Revenue

A BILL

FOR AN ACT relating to revenue and taxation; to amend sections 77-5701, 77-5703, 77-5708, 77-5712, 77-5714, 77-5723, 77-5726, 77-5727, and 77-5731, Revised Statutes Cumulative Supplement, 2006, and sections 77-5715 and 77-5725, Revised Statutes Supplement, 2007; to change provisions of certain tax incentive laws; to define and redefine terms; to change fees; to provide for applicability; to harmonize provisions; to provide for applicability; and to repeal the original sections.

Be it enacted by the people of the State of Nebraska,
Section 1. Section 77-5701, Revised Statutes Cumulative Supplement, 2006, is amended to read:

77-5701 Sections 77-5701 to 77-5734 and sections 3, 8, 9, and 15 of this act shall be known and may be cited as the Nebraska Advantage Act.

Sec. 2. Section 77-5703, Revised Statutes Cumulative Supplement, 2006, is amended to read:

77-5703 For purposes of the Nebraska Advantage Act, the definitions found in sections 77-5704 to 77-5721 and sections 3, 8, and 9 of this act shall be used.

Sec. 3. County average weekly wage for any calendar year means the most recent average weekly wage paid by all employers in the county as reported by the Department of Labor by October 1 of the year prior to application.

Sec. 4. Section 77-5708, Revised Statutes Cumulative Supplement, 2006, is amended to read:

77-5708 Entitlement period, for a tier 1 or tier 3 project, means the year during which the required increases in employment and investment were met or exceeded and each year thereafter until the end of the ninth year following the year of application or the sixth year after the year the required increases were met or exceeded, whichever is sooner. Entitlement period, for a tier 2, tier 4, or tier 5 project, means the year during which the required increases in employment and investment were met or exceeded and each year thereafter until the end of the sixth 
year after the year the required increases were met or exceeded. Entitlement period, for a tier 6 project, means the year during which the required increases in employment and investment were met or exceeded and each year thereafter until the end of the ninth year after the year the required increases were met or exceeded.

Sec. 5. Section 77-5712, Revised Statutes Cumulative Supplement, 2006, is amended to read:

77-5712 Nebraska average weekly wage for any calendar year means the most recent average weekly wage paid by all employers in all counties in Nebraska as reported by the Department of Labor by October 1 of the year prior to application.

Sec. 6. Section 77-5714, Revised Statutes Cumulative Supplement, 2006, is amended to read:

77-5714 (1) Number of new employees, for a tier 1, tier 2, tier 3, or tier 4 project, means the number of equivalent employees that are employed at the project during a year that are in excess of the number of equivalent employees during the base year, not to exceed the number of equivalent employees employed at the project during a year who are not base-year employees and who are paid wages at a rate equal to at least sixty percent of the Nebraska average weekly wage for the year of application.

(2) Number of new employees, for a tier 6 project, means the number of equivalent employees that are employed at the project during a year that are in excess of the number of equivalent
employees during the base year, not to exceed the number of
equivalent employees employed at the project during a year who are
not base-year employees and who are paid at a rate equal to or
greater than the tier 6 weekly required compensation for the year
of application.

(3) Teleworkers working for wages or salaries in Nebraska
from their residences for a taxpayer on tasks interdependent with
the work performed at the project shall be considered to be
employed at the project.

Sec. 7. Section 77-5715, Revised Statutes Supplement,
2007, is amended to read:

77-5715 (1) For a tier 2, tier 3, tier 4, or tier 5
project, qualified business means any business engaged in:

(a) The conducting of research, development, or testing
for scientific, agricultural, animal husbandry, food product, or
industrial purposes;

(b) The performance of data processing,
telemarketing, insurance, or financial services. For purposes
of this subdivision, financial services includes only financial
services provided by any financial institution subject to tax
under Chapter 77, article 38, or any person or entity licensed by
the Department of Banking and Finance or the federal Securities
and Exchange Commission and telecommunication services includes
community antenna television service, Internet access, satellite
ground station, data center, call center, or telemarketing;
(c) The assembly, fabrication, manufacture, or processing of tangible personal property;

(d) The administrative management of the taxpayer’s activities, including headquarter facilities relating to such activities or the administrative management of any of the activities of any business entity or entities in which the taxpayer or a group of its shareholders holds any direct or indirect ownership interest of at least ten percent, including headquarter facilities relating to such activities;

(e) The storage, warehousing, distribution, transportation, or sale of tangible personal property;

(f) The sale of software development services, computer systems design, product testing services, or guidance or surveillance systems design services or the licensing of technology if the taxpayer derives at least seventy-five percent of the sales or revenue attributable to such activities relating to the project from sales or licensing either to customers who are not related persons and located outside the state or to the United States Government; or

(g) Any combination of the activities listed in this subsection.

(2) For a tier 1 project, qualified business means any business engaged in:

(a) The conducting of research, development, or testing for scientific, agricultural, animal husbandry, food product, or
industrial purposes;

(b) The assembly, fabrication, manufacture, or processing of tangible personal property;

(c) The sale of software development services, computer systems design, product testing services, or guidance or surveillance systems design services or the licensing of technology if the taxpayer derives at least seventy-five percent of the sales or revenue attributable to such activities relating to the project from sales or licensing either to customers who are not related persons and are located outside the state or to the United States Government; or

(d) Any combination of activities listed in this subsection.

(3) For a tier 6 project, qualified business means any business except a business excluded by subsection (4) of this section.

(4) Qualified business does not include any business activity in which eighty percent or more of the total sales are sales to the ultimate consumer of food prepared for immediate consumption or are sales to the ultimate consumer of tangible personal property which is not assembled, fabricated, manufactured, or processed by the taxpayer or used by the purchaser in any of the activities listed in subsection (1) or (2) of this section.

Sec. 8. Tier 6 weekly required compensation means two hundred percent of the county average weekly wage for the county
in which the project is located or one hundred fifty percent of
the state average weekly wage, whichever is higher. If the project
is located in more than one county, the higher county average
weekly wage shall be used to determine the tier 6 weekly required
compensation.

Sec. 9. Wages, for a tier 1, tier 2, tier 3, or tier
4 project, means the base pay for regular hours worked. The base
pay shall not be reduced for deductions, such as participation in
benefit plans, and shall not include any payments for overtime,
bonuses, or similar payments or the value of benefits provided by
the employer. Wages, for a tier 6 project, means compensation.

Sec. 10. Section 77-5723, Revised Statutes Cumulative
Supplement, 2006, is amended to read:

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

(2) The application shall contain:

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

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

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

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

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

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

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

(4) Once satisfied that the plan in the application defines a project consistent with the purposes stated in the Nebraska Advantage Act in one or more qualified business activities within this state, that the taxpayer and the plan will qualify for benefits under the act, and that the required levels of employment and investment for the project will be met prior to the end of the fourth year after the year in which the application was submitted for a tier 1, or tier 3, or tier 6 project or the end of the sixth year after the year in which the application was submitted for a tier 2, tier 4, or tier 5 project, the Tax Commissioner shall approve the application.

(5) After approval, the taxpayer and the Tax Commissioner shall enter into a written agreement. The taxpayer shall agree to complete the project, and the Tax Commissioner, on behalf of the State of Nebraska, shall designate the approved plan of the taxpayer as a project and, in consideration of the taxpayer's agreement, agree to allow the taxpayer to use the incentives contained in the Nebraska Advantage Act. The application, and all supporting documentation, to the extent approved, shall be considered a part of the agreement. The agreement shall state:

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

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

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

(d) The date the application was filed; and

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

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

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

Sec. 11. Section 77-5725, Revised Statutes Supplement, 2007, is amended to read:

77-5725 (1) Applicants may qualify for benefits under the Nebraska Advantage Act in one of five six tiers:

(a) Tier 1, investment in qualified property of at least one million dollars and the hiring of at least ten new employees. There shall be no new project applications for benefits under this tier filed on or after January 1, 2011, without further authorization of the Legislature. All complete project applications filed before January 1, 2011, shall be considered by the Tax
Commissioner and approved if the project and taxpayer qualify for benefits. Agreements may be executed with regard to completed project applications filed before January 1, 2011. All project agreements pending, approved, or entered into before such date shall continue in full force and effect;

(b) Tier 2, investment in qualified property of at least three million dollars and the hiring of at least thirty new employees;

(c) Tier 3, the hiring of at least thirty new employees. There shall be no new project applications for benefits under this tier filed on or after January 1, 2011, without further authorization of the Legislature. All complete project applications filed before January 1, 2011, shall be considered by the Tax Commissioner and approved if the project and taxpayer qualify for benefits. Agreements may be executed with regard to completed project applications filed before January 1, 2011. All project agreements pending, approved, or entered into before such date shall continue in full force and effect;

(d) Tier 4, investment in qualified property of at least ten million dollars and the hiring of at least one hundred new employees; and

(e) Tier 5, investment in qualified property of at least thirty million dollars. Failure to maintain an average number of equivalent employees as defined in section 77-5727 greater than or equal to the number of equivalent employees in the base year shall
result in a partial recapture of benefits; and

(f) Tier 6, investment in qualified property of at least ten million dollars and the hiring of at least seventy-five new employees.

(2) When the taxpayer has met the required levels of employment and investment contained in the agreement for a tier 1, tier 2, tier 4, or tier 5, or tier 6 project, the taxpayer shall be entitled to the following incentives:

(a) A refund of all sales and use taxes for a tier 2, tier 4, or tier 5, or tier 6 project or a refund of one-half of all sales and use taxes for a tier 1 project paid under the Local Option Revenue Act, the Nebraska Revenue Act of 1967, and sections 13-319, 13-324, and 13-2813 from the date of the application through the meeting of the required levels of employment and investment for all purchases, including rentals, of:

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

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

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

(iv) Tangible personal property by a contractor or repairperson after appointment as a purchasing agent of the owner
of the improvement to real estate. The refund shall be based on fifty percent of the contract price, excluding any land, as the cost of materials subject to the sales and use tax; and

(b) A refund of all sales and use taxes for a tier 2, tier 4, \( \neq \) tier 5, or tier 6 project or a refund of one-half of all sales and use taxes for a tier 1 project paid under the Local Option Revenue Act, the Nebraska Revenue Act of 1967, and sections 13-319, 13-324, and 13-2813 on the types of purchases, including rentals, listed in subdivision (a) of this subsection for such taxes paid during each year of the entitlement period in which the taxpayer is at or above the required levels of employment and investment.

(3) Any taxpayer who qualifies for a tier 1, tier 2, tier 3, or tier 4 project shall be entitled to a credit equal to three percent times the average wage of new employees times the number of new employees if the average wage of the new employees equals at least sixty percent of the Nebraska average annual wage for the year of application. The credit shall equal four percent times the average wage of new employees times the number of new employees if the average wage of the new employees equals at least seventy-five percent of the Nebraska average annual wage for the year of application. The credit shall equal five percent times the average wage of new employees times the number of new employees if the average wage of the new employees equals at least one hundred percent of the Nebraska average annual wage for the year of
application. The credit shall equal six percent times the average wage of new employees times the number of new employees if the average wage of the new employees equals at least one hundred twenty-five percent of the Nebraska average annual wage for the year of application. For computation of such credit:

(a) Average annual wage means the total compensation paid to employees during the year at the project who are not base-year employees and who are paid wages equal to at least sixty percent of the Nebraska average weekly wage for the year of application divided by the number of equivalent employees making up such total compensation;

(b) Average wage of new employees means the average annual wage paid to employees during the year at the project who are not base-year employees and who are paid wages equal to at least sixty percent of the Nebraska average weekly wage for the year of application; and

(c) Nebraska average annual wage means the Nebraska average weekly wage times fifty-two.

(4)(a) Any taxpayer who qualifies for a tier 6 project shall be entitled to a credit equal to ten percent times the average annual compensation of new employees times the number of new employees if the average annual compensation of the new employees equals at least the tier 6 annual required compensation for the year of application.

(b) For purposes of this subsection:
(i) Average annual compensation means the total compensation paid to employees during the year at the project who are not base-year employees and who are paid at a rate equal to or greater than the tier 6 annual required compensation for the year of application, excluding any compensation in excess of one million dollars for any one employee in a year, divided by the number of equivalent employees making up such total compensation; and

(ii) Tier 6 annual required compensation means the tier 6 weekly required compensation times fifty-two.

(4) (5) Any taxpayer who has met the required levels of employment and investment for a tier 2 or tier 4 project shall receive a credit equal to ten percent of the investment made in qualified property at the project. Any taxpayer who has met the required levels of investment and employment for a tier 1 project shall receive a credit equal to three percent of the investment made in qualified property at the project. Any taxpayer who has met the required levels of investment and employment for a tier 6 project shall receive a credit equal to fifteen percent of the investment made in qualified property at the project.

(5) (6) The credits prescribed in subsections (3) and (4) (3), (4), and (5) of this section shall be allowable for compensation paid and investments made during each year of the entitlement period that the taxpayer is at or above the required levels of employment and investment.

(6) (7) The credit prescribed in subsection (4) (5) of
this section shall also be allowable during the first year of the entitlement period for investment in qualified property at the project after the date of the application and before the required levels of employment and investment were met.

(7)-(a) (8)(a) A taxpayer who has met the required levels of employment and investment for a tier 4 or tier 6 project shall receive the incentive provided in this subsection. Such investment and hiring of new employees shall be considered a required level of investment and employment for this subsection and for the recapture of benefits under this subsection only.

(b) The following property used in connection with such project or projects and acquired by the taxpayer, whether by lease or purchase, after the date the application was filed shall constitute separate classes of personal property:

(i) Turbine-powered aircraft, including turboprop, turbojet, and turbofan aircraft, except when any such aircraft is used for fundraising for or for the transportation of an elected official;

(ii) Computer systems, made up of equipment that is interconnected in order to enable the acquisition, storage, manipulation, management, movement, control, display, transmission, or reception of data involving computer software and hardware, used for business information processing which require environmental controls of temperature and power and which are capable of simultaneously supporting more than one transaction and more than
one user. A computer system includes peripheral components which require environmental controls of temperature and power connected to such computer systems. Peripheral components shall be limited to additional memory units, tape drives, disk drives, power supplies, cooling units, data switches, and communication controllers;

(iii) Depreciable personal property used for a distribution facility, including, but not limited to, storage racks, conveyor mechanisms, forklifts, and other property used to store or move products; and

(iv) Personal property which is business equipment located in a single project if the business equipment is involved directly in the manufacture or processing of agricultural products;

and

(v) For a tier 6 project, any other personal property located at the project.

(c) Such property shall be eligible for exemption from the tax on personal property from the first January 1 following the date of acquisition for property in subdivision (7)(b)(i) (8)(b)(i) of this section, or from the first January 1 following the end of the year during which the required levels were exceeded for property in subdivisions (7)(b)(ii), (iii), and (iv) (8)(b)(ii), (iii), (iv), and (v) of this section, through the ninth December 31 after the first year any property included in subdivisions (7)(b)(ii), (iii), and (iv) (8)(b)(ii), (iii), (iv), and (v) of this section qualifies for the exemption. In order to receive the
property tax exemptions allowed by subdivisions (7)(b)(i), (ii), (iii) and (iv) subdivision (8)(b) of this section, the taxpayer shall annually file a claim for exemption with the Tax Commissioner on or before May 1. The form and supporting schedules shall be prescribed by the Tax Commissioner and shall list all property for which exemption is being sought under this section. A separate claim for exemption must be filed for each project and each county in which property is claimed to be exempt. A copy of this form must also be filed with the county assessor in each county in which the applicant is requesting exemption. The Tax Commissioner shall determine the eligibility of each item listed for exemption and, on or before August 10, certify such to the taxpayer and to the affected county assessor. In determining the eligibility of items of personal property for exemption, the Tax Commissioner is limited to the question of whether the property claimed as exempt by the taxpayer falls within the classes of property described in subdivision (7)(b) (8)(b) of this section. The determination of whether a taxpayer is eligible to obtain exemption for personal property based on meeting the required levels of investment and employment is the responsibility of the Tax Commissioner.

(8) (9) The investment thresholds in this section for a particular year of application shall be adjusted by the method provided in this subsection. Beginning October 1, 2006, and each October 1 thereafter, the Producer Price Index for all commodities, published by the United States Department of Labor, Bureau of Labor
Statistics, for the most recent available period shall be divided by the Producer Price Index for the first quarter of 2006 and the result multiplied by the applicable investment threshold. The investment thresholds shall be adjusted for cumulative inflation since 2006. If the resulting amount is not a multiple of one million dollars, the amount shall be rounded to the next lowest one million dollars. The investment thresholds established by this subsection apply for purposes of project qualifications for all applications filed on or after January 1 of the following year for all years of the project. Adjustments do not apply to projects after the year of application.

Sec. 12. Section 77-5726, Revised Statutes Cumulative Supplement, 2006, is amended to read:

77-5726 (1)(a) The credits prescribed in section 77-5725 shall be established by filing the forms required by the Tax Commissioner with the income tax return for the year. The credits may be used and shall be applied in the order in which they were first allowed. The credits may be used after any other nonrefundable credits to reduce the taxpayer’s income tax liability imposed by sections 77-2714 to 77-27,135. Any decision on how part of the credit is applied shall not limit how the remaining credit could be applied under this section.

(b) The taxpayer may use the credit provided in subsection (3) of section 77-5725 to reduce the taxpayer’s income tax withholding employer or payor
tax liability under section 77-2756 or 77-2757 to the extent such
liability is attributable to the number of new employees at the
project. To the extent of the credit used, such withholding shall
not constitute public funds or state tax revenue and shall not
consist of a trust fund or be owned by the state. The use by the
taxpayer of the credit shall not change the amount that otherwise
would be reported by the taxpayer to the employee under section
77-2754 as income tax withheld and shall not reduce the amount that
otherwise would be allowed by the state as a refundable credit
on an employee’s income tax return as income tax withheld under
section 77-2755.

The amount of credits used against income tax withholding
shall not exceed the withholding attributable to new employees at
the project. If the amount of credit used by the taxpayer against
income tax withholding exceeds this amount, the excess withholding
shall be returned to the Department of Revenue in the manner
provided in section 77-2756, such excess amount returned shall be
considered unused, and the amount of unused credits may be used
as otherwise permitted in this section or shall carry over to the
extent authorized in subdivision (1)(d) of this section.

(c) Credits may be used to obtain a refund of sales and
use taxes under the Local Option Revenue Act, the Nebraska Revenue
Act of 1967, and sections 13-319, 13-324, and 13-2813 which are not
otherwise refundable that are paid on purchases, including rentals,
for use at the project for a tier 1, tier 2, tier 3, or tier 4
project or for use within this state for a tier 6 project.

(d) The credits earned for a tier 6 project may be used
to obtain a payment from the state equal to the ad valorem tax paid
to political subdivisions of this state that became due after the
year the required levels of employment and investment were met and
before the end of the carryover period, on real property that is
located in this state. Payments shall not be allowed for any taxes
paid on real property for which the taxes are divided under section
18-2147 or 58-507.

(e) Credits may be carried over until fully utilized,
except that such credits may not be carried over more than nine
years after the year of application for a tier 1 or tier 3 project,
or fourteen years after the year of application for a tier 2
or tier 4 project, or more than one year past the end of the
entitlement period for a tier 6 project.

(2) (a) No refund claims shall be filed until after the
required levels of employment and investment have been met.

(b) Refund claims shall be filed no more than once each
quarter for refunds under the Nebraska Advantage Act, except that
any claim for a refund in excess of twenty-five thousand dollars
may be filed at any time.

(c) Any refund claim for sales and use taxes on materials
incorporated into real estate as a part of the project shall be
filed by and the refund paid to the owner of the improvement
to real estate. A refund claim for such materials purchased
by a purchasing agent shall include a copy of the purchasing
agent appointment, the contract price, and a certification by
the contractor or repairperson of the percentage of the materials
incorporated into the project on which sales and use taxes were
paid to Nebraska after appointment as purchasing agent.

(d) All refund claims shall be filed, processed, and
allowed as any other claim under section 77-2708, except that
the amounts allowed to be refunded under the Nebraska Advantage
Act shall be deemed to be overpayments and shall be refunded
notwithstanding any limitation in subdivision (2)(a) of section
77-2708. The refund may be allowed if the claim is filed within
three calendar years from the end of the year the required levels
of employment and investment are met or within the period set forth
in section 77-2708.

(e) If a claim for a refund of sales and use taxes
under the Local Option Revenue Act or sections 13-319, 13-324, and
13-2813 of more than twenty-five thousand dollars is filed by June
15 of a given year, the refund shall be made on or after November
15 of the same year. If such a claim is filed on or after June
16 of a given year, the refund shall not be made until on or
after November 15 of the following year. The Tax Commissioner shall
notify the affected city, village, county, or municipal county of
the amount of refund claims of sales and use taxes under the Local
Option Revenue Act or sections 13-319, 13-324, and 13-2813 that are
in excess of twenty-five thousand dollars on or before July 1 of
the year before the claims will be paid under this section.

(f) Interest shall not be allowed on any sales and use taxes refunded under the Nebraska Advantage Act.

(3) The appointment of purchasing agents shall be recognized for the purpose of changing the status of a contractor or repairperson as the ultimate consumer of tangible personal property purchased after the date of the appointment which is physically incorporated into the project and becomes the property of the owner of the improvement to real estate. The purchasing agent shall be jointly liable for the payment of the sales and use tax on the purchases with the owner of the improvement to real estate.

(4) A determination that a taxpayer is not engaged in a qualified business or has failed to meet or maintain the required levels of employment or investment for incentives, exemptions, or recapture may be protested to the Tax Commissioner within thirty days after the written determination by the Department of Revenue. The Tax Commissioner shall issue a written order resolving such protests. The determination of the Tax Commissioner may be appealed to the district court of Lancaster County within thirty days after the issuance of the order.

Sec. 13. Section 77-5727, Revised Statutes Cumulative Supplement, 2006, is amended to read:

77-5727 (1)(a) If the taxpayer fails either to meet the required levels of employment or investment for the applicable
project by the end of the fourth year after the end of the year
the application was submitted for a tier 1, tier 3, or tier 6 project or by the end of the sixth year after the end of the year the application was submitted for a tier 2, tier 4, or tier 5 project or to utilize such project in a qualified business at employment and investment levels at or above those required in the agreement for the entire entitlement period, all or a portion of the incentives set forth in the Nebraska Advantage Act shall be recaptured or disallowed.

(b) In the case of a taxpayer who has failed to meet the required levels of investment or employment within the required time period, all reduction in the personal property tax because of the act shall be recaptured.

(2) In the case of a taxpayer who has failed to maintain the project at the required levels of employment or investment for the entire entitlement period, any reduction in the personal property tax, any refunds in tax allowed under subsection (2) of section 77-5725, and any refunds or reduction in tax allowed because of the use of a credit allowed under subsection (7) of section 77-5725 shall be partially recaptured from either the taxpayer or the owner of the improvement to real estate and any carryovers of credits shall be partially disallowed. One-seventh of the refunds, one-seventh of the reduction in personal property tax, and one-seventh of the credits used shall be recaptured and one-seventh of the remaining carryovers and the last remaining year
of personal property tax exemption shall be disallowed for each year the taxpayer did not maintain such project at or above the required levels of employment or investment.

(3) In the case of a taxpayer qualified under tier 5 who has failed to maintain the average number of equivalent employees at the project at the end of the six years following the year the taxpayer attained the required amount of investment, any refunds in tax allowed under subdivision (2)(a) of section 77-5725 shall be partially recaptured from the taxpayer. The amount of recapture shall be the total amount of refunds allowed for all years times the reduction in the average number of equivalent employees employed at the end of the entitlement period from the number of equivalent employees employed in the base year divided by the number of equivalent employees employed in the base year. For purposes of this subsection, the average number of equivalent employees shall be calculated at the end of the entitlement period by adding the number of equivalent employees in the year the taxpayer attains the required level of investment and each of the next following six years and dividing the result by seven.

(4) If the taxpayer receives any refunds or reduction in tax to which the taxpayer was not entitled or which were in excess of the amount to which the taxpayer was entitled, the refund or reduction in tax shall be recaptured separate from any other recapture otherwise required by this section. Any amount recaptured under this subsection shall be excluded from the amounts subject to
recapture under other subsections of this section.

(5) Any refunds or reduction in tax due, to the extent required to be recaptured, shall be deemed to be an underpayment of the tax and shall be immediately due and payable. When tax benefits were received in more than one year, the tax benefits received in the most recent year shall be recovered first and then the benefits received in earlier years up to the extent of the required recapture.

(6) Any personal property tax that would have been due except for the exemption allowed under the Nebraska Advantage Act, to the extent it becomes due under this section, shall be considered delinquent and shall be immediately due and payable to the county or counties in which the property was located when exempted. All amounts received by a county under this section shall be allocated to each taxing unit levying taxes on tangible personal property in the county in the same proportion that the levy on tangible personal property of such taxing unit bears to the total levy of all of such taxing units.

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

(8) Any amounts due under this section shall be recaptured notwithstanding other allowable credits and shall not be subsequently refunded under any provision of the Nebraska Advantage
Act unless the recapture was in error.

(9) The recapture required by this section shall not occur if the failure to maintain the required levels of employment or investment was caused by an act of God or national emergency.

Sec. 14. Section 77-5731, Revised Statutes Cumulative Supplement, 2006, is amended to read:

77-5731 (1) The Tax Commissioner shall submit an annual report to the Legislature no later than July 15 of each year.

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

(3) The report shall also state, for taxpayers who are parties to agreements, by industry group (a) the specific incentive options applied for under the Nebraska Advantage Act, (b) the refunds allowed on the investment, (c) the credits earned, (d) the credits used to reduce the corporate income tax and the credits used to reduce the individual income tax, (e) the credits used to obtain sales and use tax refunds, (f) the credits used against withholding liability, (g) the number of jobs created under the act, (h) the total number of employees employed in the state on the last day of the calendar quarter prior to the application date and the total number of employees employed in the state on subsequent reporting dates, (i) the expansion of capital investment, (j) the estimated wage levels of jobs created under the act subsequent to
the application date, (k) the total number of qualified applicants, (l) the projected future state revenue gains and losses, (m) the sales tax refunds owed, (n) the credits outstanding under the act, and (o) the value of personal property exempted by class in each county under the act, (p) the value of property for which payments equal to property taxes paid were allowed in each county, and (q) the total amount of the payments.

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

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

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

(7) The report shall include an executive summary which shows aggregate information for all projects for which the information on incentives used in subsection (6) of this section is reported as follows: (a) The total incentives used by all taxpayers for projects detailed in subsection (6) of this section during the previous two years; (b) the number of projects; (c) the total number of employees of these taxpayers employed in the state on the last day of the calendar quarter prior to the application date, the new jobs at the project for which credits have been granted, and the total number of employees employed in the state by these taxpayers on subsequent reporting dates; (d) the average compensation paid employees in the state in the year of application and for the new jobs at the project; and (e) the total
investment for which incentives were granted. The executive summary shall summarize the number of states which grant investment tax credits, job tax credits, sales and use tax refunds for qualified investment, and personal property tax exemptions and the investment and employment requirements under which they may be granted.

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

Sec. 15. The changes made in sections 77-5703, 77-5708, 77-5712, 77-5714, 77-5715, 77-5723, 77-5725, 77-5726, 77-5727, and 77-5731 by this legislative bill and sections 3, 8, and 9 of this act apply to all applications filed on and after the effective date of this act. For all applications filed prior to such date, the provisions of the Nebraska Advantage Act as they existed immediately prior to such date apply.

Sec. 16. Original sections 77-5701, 77-5703, 77-5708, 77-5712, 77-5714, 77-5723, 77-5725, 77-5726, 77-5727, and 77-5731, Revised Statutes Cumulative Supplement, 2006, and sections 77-5715 and 77-5725, Revised Statutes Supplement, 2007, are repealed.