

LEGISLATURE OF NEBRASKA

ONE HUNDRED FIRST LEGISLATURE

FIRST SESSION

LEGISLATIVE BILL 566

Introduced by Dubas, 34; Haar, 21; Mello, 5.

Read first time January 21, 2009

Committee: Revenue

A BILL

1 FOR AN ACT relating to economic development; to amend section
2 81-1201.21, Reissue Revised Statutes of Nebraska, and
3 sections 77-5708, 77-5714, 77-5715, 77-5723, 77-5725,
4 77-5726, and 77-5727, Revised Statutes Cumulative
5 Supplement, 2008; to change provisions of the Nebraska
6 Advantage Act to provide incentives for windmill
7 manufacturers; to change provisions relating to use of
8 the Job Training Cash Fund; to harmonize provisions; and
9 to repeal the original sections.
10 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 77-5708, Revised Statutes Cumulative
2 Supplement, 2008, is amended to read:

3 77-5708 Entitlement period, for a tier 1 or tier 3
4 project, means the year during which the required increases in
5 employment and investment were met or exceeded and each year
6 thereafter until the end of the ninth year following the year of
7 application or the sixth year after the year the required increases
8 were met or exceeded, whichever is sooner. Entitlement period,
9 for a tier 2, tier 4, or tier 5 project, means the year during
10 which the required increases in employment and investment were met
11 or exceeded and each year thereafter until the end of the sixth
12 year after the year the required increases were met or exceeded.
13 Entitlement period, for a tier 6 project, means the year during
14 which the required increases in employment and investment were met
15 or exceeded and each year thereafter until the end of the ninth
16 year after the year the required increases were met or exceeded.
17 Entitlement period, for a tier 7 project, means the year during
18 which the required increases in employment and investment were
19 met or exceeded and each year thereafter until the end of the
20 eighteenth year following the year of application or the twelfth
21 year after the year the required increases were met or exceeded,
22 whichever is sooner. Entitlement period, for a tier 8 project,
23 means the year during which the required increases in employment
24 and investment were met or exceeded and each year thereafter until
25 the end of the twelfth year after the year the required increases

1 were met or exceeded.

2 Sec. 2. Section 77-5714, Revised Statutes Cumulative
3 Supplement, 2008, is amended to read:

4 77-5714 (1) Number of new employees, for a tier 1, tier
5 2, tier 3, ~~or tier 4,~~ tier 7, or tier 8 project, means the number
6 of equivalent employees that are employed at the project during
7 a year that are in excess of the number of equivalent employees
8 during the base year, not to exceed the number of equivalent
9 employees employed at the project during a year who are not
10 base-year employees and who are paid wages at a rate equal to at
11 least sixty percent of the Nebraska average weekly wage for the
12 year of application.

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

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

25 Sec. 3. Section 77-5715, Revised Statutes Cumulative

1 Supplement, 2008, is amended to read:

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

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

7 (b) The performance of data processing,
8 telecommunication, insurance, or financial services. For purposes
9 of this subdivision, financial services includes only financial
10 services provided by any financial institution subject to tax
11 under Chapter 77, article 38, or any person or entity licensed by
12 the Department of Banking and Finance or the federal Securities
13 and Exchange Commission and telecommunication services includes
14 community antenna television service, Internet access, satellite
15 ground station, data center, call center, or telemarketing;

16 (c) The assembly, fabrication, manufacture, or processing
17 of tangible personal property;

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

25 (e) The storage, warehousing, distribution,

1 transportation, or sale of tangible personal property;

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

10 (g) The research, development, and maintenance of an
11 Internet web portal. For purposes of this subdivision, Internet web
12 portal means an Internet site that allows users to access, search,
13 and navigate the Internet; or

14 (h) Any combination of the activities listed in this
15 subsection.

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

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

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

23 (c) The sale of software development services, computer
24 systems design, product testing services, or guidance or
25 surveillance systems design services or the licensing of technology

1 if the taxpayer derives at least seventy-five percent of the sales
2 or revenue attributable to such activities relating to the project
3 from sales or licensing either to customers who are not related
4 persons and are located outside the state or to the United States
5 Government; or

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

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

11 (4) For a tier 7 or tier 8 project, qualified
12 business means any business engaged in the assembly, fabrication,
13 manufacturing, or processing of windmills.

14 ~~(4)~~ (5) Qualified business does not include any business
15 activity in which eighty percent or more of the total sales are
16 sales to the ultimate consumer of food prepared for immediate
17 consumption or are sales to the ultimate consumer of tangible
18 personal property which is not assembled, fabricated, manufactured,
19 or processed by the taxpayer or used by the purchaser in any of the
20 activities listed in subsection (1) or (2) of this section.

21 Sec. 4. Section 77-5723, Revised Statutes Cumulative
22 Supplement, 2008, is amended to read:

23 77-5723 (1) In order to utilize the incentives set
24 forth in the Nebraska Advantage Act, the taxpayer shall file
25 an application, on a form developed by the Tax Commissioner,

1 requesting an agreement with the Tax Commissioner.

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 Tax Commissioner to support the plan and to define
7 a project;

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

17 (d) A nonrefundable application fee of one thousand
18 dollars for a tier 1 or tier 7 project, two thousand five hundred
19 dollars for a tier 2, tier 3, or tier 5 project, five thousand
20 dollars for a tier 4 or tier 8 project, and ten thousand dollars
21 for a tier 6 project. The fee shall be credited to the Nebraska
22 Incentives Fund; and

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

1 sales tax refunds as accurately as possible.

2 The application and all supporting information shall be
3 confidential except for the name of the taxpayer, the location of
4 the project, the amounts of increased employment and investment,
5 and the information required to be reported by sections 77-5731 and
6 77-5734.

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

13 (4) Once satisfied that the plan in the application
14 defines a project consistent with the purposes stated in the
15 Nebraska Advantage Act in one or more qualified business activities
16 within this state, that the taxpayer and the plan will qualify for
17 benefits under the act, and that the required levels of employment
18 and investment for the project will be met prior to the end of the
19 fourth year after the year in which the application was submitted
20 for a tier 1, tier 3, ~~or tier 6,~~ or tier 7 project or the end
21 of the sixth year after the year in which the application was
22 submitted for a tier 2, tier 4, ~~or tier 5,~~ or tier 8 project, the
23 Tax Commissioner shall approve the application.

24 (5) After approval, the taxpayer and the Tax Commissioner
25 shall enter into a written agreement. The taxpayer shall agree

1 to complete the project, and the Tax Commissioner, on behalf of
2 the State of Nebraska, shall designate the approved plan of the
3 taxpayer as a project and, in consideration of the taxpayer's
4 agreement, agree to allow the taxpayer to use the incentives
5 contained in the Nebraska Advantage Act. The application, and
6 all supporting documentation, to the extent approved, shall be
7 considered a part of the agreement. The agreement shall state:

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

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

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

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

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

21 (6) The incentives contained in section 77-5725 shall be
22 in lieu of the tax credits allowed by the Nebraska Advantage Rural
23 Development Act for any project. In computing credits under the
24 act, any investment or employment which is eligible for benefits
25 or used in determining benefits under the Nebraska Advantage Act

1 shall be subtracted from the increases computed for determining
2 the credits under section 77-27,188. New investment or employment
3 at a project location that results in the meeting or maintenance
4 of the employment or investment requirements, the creation of
5 credits, or refunds of taxes under the Employment and Investment
6 Growth Act shall not be considered new investment or employment
7 for purposes of the Nebraska Advantage Act. The use of carryover
8 credits under the Employment and Investment Growth Act, the Invest
9 Nebraska Act, the Nebraska Advantage Rural Development Act, or the
10 Quality Jobs Act shall not preclude investment and employment from
11 being considered new investment or employment under the Nebraska
12 Advantage Act. The use of property tax exemptions at the project
13 under the Employment and Investment Growth Act shall not preclude
14 investment not eligible for the property tax exemption from being
15 considered new investment under the Nebraska Advantage Act.

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

1 Sec. 5. Section 77-5725, Revised Statutes Cumulative
2 Supplement, 2008, is amended to read:

3 77-5725 (1) Applicants may qualify for benefits under the
4 Nebraska Advantage Act in one of ~~six~~ eight tiers:

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

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

19 (c) Tier 3, the hiring of at least thirty new employees.
20 There shall be no new project applications for benefits under
21 this tier filed on or after January 1, 2011, without further
22 authorization of the Legislature. All complete project applications
23 filed before January 1, 2011, shall be considered by the Tax
24 Commissioner and approved if the project and taxpayer qualify
25 for benefits. Agreements may be executed with regard to completed

1 project applications filed before January 1, 2011. All project
2 agreements pending, approved, or entered into before such date
3 shall continue in full force and effect;

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

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

12 (f) Tier 6, investment in qualified property of at least
13 ten million dollars and the hiring of at least seventy-five new
14 employees or the investment in qualified property of at least
15 one hundred million dollars and the hiring of at least fifty new
16 employees. Agreements may be executed with regard to completed
17 project applications filed before January 1, 2016. All project
18 agreements pending, approved, or entered into before such date
19 shall continue in full force and effect;—

20 (g) Tier 7, investment in qualified property of at least
21 one million dollars and the hiring of at least ten new employees;
22 and

23 (h) Tier 8, investment in qualified property of at least
24 ten million dollars and the hiring of at least one hundred new
25 employees.

1 (2) When the taxpayer has met the required levels of
 2 employment and investment contained in the agreement for a tier 1,
 3 tier 2, tier 4, tier 5, ~~or tier 6,~~ tier 7, or tier 8 project, the
 4 taxpayer shall be entitled to the following incentives:

5 (a) A refund of all sales and use taxes for a tier
 6 2, tier 4, tier 5, ~~or tier 6,~~ tier 7, or tier 8 project or a
 7 refund of one-half of all sales and use taxes for a tier 1 project
 8 paid under the Local Option Revenue Act, the Nebraska Revenue Act
 9 of 1967, and sections 13-319, 13-324, and 13-2813 from the date
 10 of the application through the meeting of the required levels of
 11 employment and investment 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. The refund shall be based on
 23 fifty percent of the contract price, excluding any land, as the
 24 cost of materials subject to the sales and use tax; and

25 (b) A refund of all sales and use taxes for a tier 2,

1 tier 4, tier 5, ~~or tier 6~~, tier 7, or tier 8 project or a refund of
2 one-half of all sales and use taxes for a tier 1 project paid under
3 the Local Option Revenue Act, the Nebraska Revenue Act of 1967,
4 and sections 13-319, 13-324, and 13-2813 on the types of purchases,
5 including rentals, listed in subdivision (a) of this subsection for
6 such taxes paid during each year of the entitlement period in which
7 the taxpayer is at or above the required levels of employment and
8 investment.

9 (3) Any taxpayer who qualifies for a tier 1, tier 2,
10 tier 3, or tier 4 project shall be entitled to a credit equal to
11 three percent times the average wage of new employees times the
12 number of new employees if the average wage of the new employees
13 equals at least sixty percent of the Nebraska average annual wage
14 for the year of application. The credit shall equal four percent
15 times the average wage of new employees times the number of new
16 employees if the average wage of the new employees equals at least
17 seventy-five percent of the Nebraska average annual wage for the
18 year of application. The credit shall equal five percent times the
19 average wage of new employees times the number of new employees
20 if the average wage of the new employees equals at least one
21 hundred percent of the Nebraska average annual wage for the year of
22 application. The credit shall equal six percent times the average
23 wage of new employees times the number of new employees if the
24 average wage of the new employees equals at least one hundred
25 twenty-five percent of the Nebraska average annual wage for the

1 year of application. For computation of such credit:

2 (a) Average annual wage means the total compensation paid
3 to employees during the year at the project who are not base-year
4 employees and who are paid wages equal to at least sixty percent
5 of the Nebraska average weekly wage for the year of application,
6 excluding any compensation in excess of one million dollars paid
7 to any one employee during the year, divided by the number of
8 equivalent employees making up such total compensation;

9 (b) Average wage of new employees means the average
10 annual wage paid to employees during the year at the project who
11 are not base-year employees and who are paid wages equal to at
12 least sixty percent of the Nebraska average weekly wage for the
13 year of application, excluding any compensation in excess of one
14 million dollars paid to any one employee during the year; and

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

17 The credit under this subsection for a taxpayer who
18 qualifies for a tier 7 or tier 8 project shall be doubled.

19 (4) Any taxpayer who qualifies for a tier 6 project shall
20 be entitled to a credit equal to ten percent times the total
21 compensation paid to all employees, other than base-year employees,
22 excluding any compensation in excess of one million dollars paid to
23 any one employee during the year, employed at the project.

24 (5) Any taxpayer who has met the required levels of
25 employment and investment for a tier 2 or tier 4 project shall

1 receive a credit equal to ten percent of the investment made in
2 qualified property at the project. Any taxpayer who has met the
3 required levels of investment and employment for a tier 1 project
4 shall receive a credit equal to three percent of the investment
5 made in qualified property at the project. Any taxpayer who has
6 met the required levels of investment and employment for a tier
7 6 project shall receive a credit equal to fifteen percent of the
8 investment made in qualified property at the project.

9 The credit under this subsection for a taxpayer who
10 qualifies for a tier 7 or tier 8 project shall be doubled.

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

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

21 (8)(a) A taxpayer who has met the required levels of
22 employment and investment for a tier 4, ~~or~~ tier 6, or tier 8
23 project shall receive the incentive provided in this subsection. A
24 taxpayer who has a project for an Internet web portal and who has
25 met the required level of investment for a tier 5 project shall

1 receive the incentive provided in this subsection for property
2 in subdivision (8)(b)(ii) of this section. Such investment and
3 hiring of new employees shall be considered a required level of
4 investment and employment for this subsection and for the recapture
5 of benefits under this subsection only.

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

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

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

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

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

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

11 (c) Such property shall be eligible for exemption from
12 the tax on personal property from the first January 1 following
13 the date of acquisition for property in subdivision (8)(b)(i)
14 of this section, or from the first January 1 following the end
15 of the year during which the required levels were exceeded for
16 property in subdivisions (8)(b)(ii), (iii), (iv), and (v) of this
17 section, through the ninth December 31 after the first year any
18 property included in subdivisions (8)(b)(ii), (iii), (iv), and (v)
19 of this section qualifies for the exemption. In order to receive
20 the property tax exemptions allowed by subdivision (8)(b) of this
21 section, the taxpayer shall annually file a claim for exemption
22 with the Tax Commissioner on or before May 1. The form and
23 supporting schedules shall be prescribed by the Tax Commissioner
24 and shall list all property for which exemption is being sought
25 under this section. A separate claim for exemption must be filed

1 for each project and each county in which property is claimed
2 to be exempt. A copy of this form must also be filed with the
3 county assessor in each county in which the applicant is requesting
4 exemption. The Tax Commissioner shall determine the eligibility
5 of each item listed for exemption and, on or before August 1,
6 certify such to the taxpayer and to the affected county assessor.
7 In determining the eligibility of items of personal property for
8 exemption, the Tax Commissioner is limited to the question of
9 whether the property claimed as exempt by the taxpayer falls
10 within the classes of property described in subdivision (8)(b) of
11 this section. The determination of whether a taxpayer is eligible
12 to obtain exemption for personal property based on meeting the
13 required levels of investment and employment is the responsibility
14 of the Tax Commissioner.

15 (9) The investment thresholds in this section for a
16 particular year of application shall be adjusted by the method
17 provided in this subsection. Beginning October 1, 2006, and each
18 October 1 thereafter, the Producer Price Index for all commodities,
19 published by the United States Department of Labor, Bureau of Labor
20 Statistics, for the most recent available period shall be divided
21 by the Producer Price Index for the first quarter of 2006 and
22 the result multiplied by the applicable investment threshold. The
23 investment thresholds shall be adjusted for cumulative inflation
24 since 2006. If the resulting amount is not a multiple of one
25 million dollars, the amount shall be rounded to the next lowest

1 one million dollars. The investment thresholds established by this
2 subsection apply for purposes of project qualifications for all
3 applications filed on or after January 1 of the following year
4 for all years of the project. Adjustments do not apply to projects
5 after the year of application.

6 Sec. 6. Section 77-5726, Revised Statutes Cumulative
7 Supplement, 2008, is amended to read:

8 77-5726 (1)(a) The credits prescribed in section 77-5725
9 shall be established by filing the forms required by the Tax
10 Commissioner with the income tax return for the year. The credits
11 may be used and shall be applied in the order in which they
12 were first allowed. The credits may be used after any other
13 nonrefundable credits to reduce the taxpayer's income tax liability
14 imposed by sections 77-2714 to 77-27,135. Any decision on how part
15 of the credit is applied shall not limit how the remaining credit
16 could be applied under this section.

17 (b) The taxpayer may use the credit provided in
18 subsections (3) and (4) of section 77-5725 to reduce the taxpayer's
19 income tax withholding employer or payor tax liability under
20 section 77-2756 or 77-2757 to the extent such liability is
21 attributable to the number of new employees at the project. To the
22 extent of the credit used, such withholding shall not constitute
23 public funds or state tax revenue and shall not constitute a trust
24 fund or be owned by the state. The use by the taxpayer of the
25 credit shall not change the amount that otherwise would be reported

1 by the taxpayer to the employee under section 77-2754 as income tax
2 withheld and shall not reduce the amount that otherwise would be
3 allowed by the state as a refundable credit on an employee's income
4 tax return as income tax withheld under section 77-2755.

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

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

20 (d) The credits earned for a tier 6 project may be used
21 to obtain a payment from the state equal to the real property
22 taxes due after the year the required levels of employment and
23 investment were met and before the end of the carryover period,
24 for real property that is included in such project and acquired
25 by the taxpayer, whether by lease or purchase, after the date the

1 application was filed. The payment from the state shall be made
2 only after payment of the real property taxes have been made to the
3 county as required by law. Payments shall not be allowed for any
4 taxes paid on real property for which the taxes are divided under
5 section 18-2147 or 58-507.

6 (e) Credits may be carried over until fully utilized,
7 except that such credits may not be carried over more than nine
8 years after the year of application for a tier 1 or tier 3 project,
9 fourteen years after the year of application for a tier 2 or tier
10 4 project, ~~or~~ more than one year past the end of the entitlement
11 period for a tier 6 project, eighteen years after the year of
12 application for a tier 7 project, or twenty-eight years after the
13 year of application for a tier 8 project.

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

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

20 (c) Any refund claim for sales and use taxes on materials
21 incorporated into real estate as a part of the project shall be
22 filed by and the refund paid to the owner of the improvement
23 to real estate. A refund claim for such materials purchased
24 by a purchasing agent shall include a copy of the purchasing
25 agent appointment, the contract price, and a certification by

1 the contractor or repairperson of the percentage of the materials
2 incorporated into the project on which sales and use taxes were
3 paid to Nebraska after appointment as purchasing agent.

4 (d) All refund claims shall be filed, processed, and
5 allowed as any other claim under section 77-2708, except that
6 the amounts allowed to be refunded under the Nebraska Advantage
7 Act shall be deemed to be overpayments and shall be refunded
8 notwithstanding any limitation in subdivision (2)(a) of section
9 77-2708. The refund may be allowed if the claim is filed within
10 three calendar years from the end of the year the required levels
11 of employment and investment are met or within the period set forth
12 in section 77-2708.

13 (e) If a claim for a refund of sales and use taxes
14 under the Local Option Revenue Act or sections 13-319, 13-324, and
15 13-2813 of more than twenty-five thousand dollars is filed by June
16 15 of a given year, the refund shall be made on or after November
17 15 of the same year. If such a claim is filed on or after June
18 16 of a given year, the refund shall not be made until on or
19 after November 15 of the following year. The Tax Commissioner shall
20 notify the affected city, village, county, or municipal county of
21 the amount of refund claims of sales and use taxes under the Local
22 Option Revenue Act or sections 13-319, 13-324, and 13-2813 that are
23 in excess of twenty-five thousand dollars on or before July 1 of
24 the year before the claims will be paid under this section.

25 (f) Interest shall not be allowed on any taxes refunded

1 under the Nebraska Advantage Act.

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

11 (4) A determination that a taxpayer is not engaged in a
12 qualified business or has failed to meet or maintain the required
13 levels of employment or investment for incentives, exemptions, or
14 recapture may be protested within sixty days after the mailing of
15 the written notice of the proposed determination. If the notice
16 of proposed determination is not protested within the sixty-day
17 period, the proposed determination is a final determination. If the
18 notice is protested, the Tax Commissioner shall issue a written
19 order resolving such protests. The written order of the Tax
20 Commissioner resolving a protest may be appealed to the district
21 court of Lancaster County within thirty days after the issuance of
22 the order.

23 Sec. 7. Section 77-5727, Revised Statutes Cumulative
24 Supplement, 2008, is amended to read:

25 77-5727 (1)(a) If the taxpayer fails either to meet the

1 required levels of employment or investment for the applicable
2 project by the end of the fourth year after the end of the year the
3 application was submitted for a tier 1, tier 3, ~~or tier 6,~~ or tier
4 7 project or by the end of the sixth year after the end of the year
5 the application was submitted for a tier 2, tier 4, ~~or tier 5,~~ or
6 tier 8 project or to utilize such project in a qualified business
7 at employment and investment levels at or above those required in
8 the agreement for the entire entitlement period, all or a portion
9 of the incentives set forth in the Nebraska Advantage Act shall be
10 recaptured or disallowed.

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

15 (2) In the case of a taxpayer who has failed to maintain
16 the project at the required levels of employment or investment
17 for the entire entitlement period, any reduction in the personal
18 property tax, any refunds in tax allowed under subsection (2)
19 of section 77-5725, and any refunds or reduction in tax allowed
20 because of the use of a credit allowed under section 77-5725 shall
21 be partially recaptured from either the taxpayer or the owner of
22 the improvement to real estate and any carryovers of credits shall
23 be partially disallowed. One-seventh of the refunds, one-seventh
24 of the reduction in personal property tax, and one-seventh of the
25 credits used shall be recaptured and one-seventh of the remaining

1 carryovers and the last remaining year of personal property tax
2 exemption shall be disallowed for each year the taxpayer did not
3 maintain such project at or above the required levels of employment
4 or investment.

5 (3) In the case of a taxpayer qualified under tier 5 who
6 has failed to maintain the average number of equivalent employees
7 at the project at the end of the six years following the year the
8 taxpayer attained the required amount of investment, any refunds
9 in tax allowed under subdivision (2)(a) of section 77-5725 or
10 any reduction in the personal property tax under section 77-5725
11 shall be partially recaptured from the taxpayer. The amount of
12 recapture shall be the total amount of refunds and reductions in
13 tax allowed for all years times the reduction in the average number
14 of equivalent employees employed at the end of the entitlement
15 period from the number of equivalent employees employed in the
16 base year divided by the number of equivalent employees employed
17 in the base year. For purposes of this subsection, the average
18 number of equivalent employees shall be calculated at the end of
19 the entitlement period by adding the number of equivalent employees
20 in the year the taxpayer attains the required level of investment
21 and each of the next following six years and dividing the result by
22 seven.

23 (4) If the taxpayer receives any refunds or reduction
24 in tax to which the taxpayer was not entitled or which were in
25 excess of the amount to which the taxpayer was entitled, the refund

1 or reduction in tax shall be recaptured separate from any other
2 recapture otherwise required by this section. Any amount recaptured
3 under this subsection shall be excluded from the amounts subject to
4 recapture under other subsections of this section.

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

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

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

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

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

8 Sec. 8. Section 81-1201.21, Reissue Revised Statutes of
9 Nebraska, is amended to read:

10 81-1201.21 (1) There is hereby created the Job Training
11 Cash Fund. The fund shall be under the direction of the Department
12 of Economic Development. Money may be transferred to the fund
13 pursuant to subdivision (1)(b)(iv) of section 48-621 and from
14 the Cash Reserve Fund at the direction of the Legislature. The
15 department shall establish a subaccount for all money transferred
16 from the Cash Reserve Fund to the Job Training Cash Fund on or
17 after July 1, 2005. Any unexpended or unobligated balance remaining
18 within such subaccount on July 1, 2010, shall be transferred by the
19 State Treasurer to the Cash Reserve Fund no later than July 10,
20 2010. Any obligated amount not transferred from the subaccount that
21 remains unexpended on July 1, 2009, shall be transferred by the
22 State Treasurer to the Cash Reserve Fund no later than December 31,
23 2011.

24 (2) The department shall use the Job Training Cash Fund
25 to provide reimbursements for job training activities, including

1 employee assessment, preemployment training, on-the-job training,
2 training equipment costs, and other reasonable costs related to
3 helping industry and business locate or expand in Nebraska, or
4 to provide upgrade skills training of the existing labor force
5 necessary to adapt to new technology or the introduction of new
6 product lines. The department shall use at least five million
7 dollars of the fund for the purpose of recruiting and retaining
8 employees who work for businesses which manufacture or modify
9 equipment which can be used to generate or produce energy from
10 renewable resources.

11 (3) The department shall establish a subaccount within
12 the fund to provide job training grants targeted to small
13 employers, rural employers, and poverty area employers meeting
14 one of the following criteria: (a) Employ twenty-five or fewer
15 employees, (b) located in rural areas of Nebraska, or (c) located
16 in areas of high concentration of poverty within the corporate
17 limits of a city or village consisting of one or more contiguous
18 census tracts, as determined by the most recent federal decennial
19 census, which contain a percentage of persons below the poverty
20 line of greater than thirty percent, and all census tracts
21 contiguous to such tract or tracts, as determined by the most
22 recent federal decennial census. The department shall calculate the
23 amount of prior year investment income earnings accruing to the
24 fund and allocate such amount to the subaccount for small, rural,
25 or poverty area employer grants.

1 (4) Any money in the fund available for investment
2 shall be invested by the state investment officer pursuant to
3 the Nebraska Capital Expansion Act and the Nebraska State Funds
4 Investment Act.

5 Sec. 9. Original section 81-1201.21, Reissue Revised
6 Statutes of Nebraska, and sections 77-5708, 77-5714, 77-5715,
7 77-5723, 77-5725, 77-5726, and 77-5727, Revised Statutes Cumulative
8 Supplement, 2008, are repealed.