

LEGISLATURE OF NEBRASKA

ONE HUNDRED SECOND LEGISLATURE

SECOND SESSION

**LEGISLATIVE BILL 1118**

Introduced by Cornett, 45.

Read first time January 19, 2012

Committee: Revenue

A BILL

1 FOR AN ACT relating to the Nebraska Advantage Act; to amend sections  
2 77-5701, 77-5703, and 77-5727, Reissue Revised Statutes  
3 of Nebraska, and sections 77-5715, 77-5725, 77-5726, and  
4 77-5735, Revised Statutes Cumulative Supplement, 2010; to  
5 provide tax incentives for large data center projects; to  
6 define a term; to harmonize provisions; to repeal the  
7 original sections; and to declare an emergency.  
8 Be it enacted by the people of the State of Nebraska,

1           Section 1. Section 77-5701, Reissue Revised Statutes of  
2 Nebraska, is amended to read:

3           77-5701 Sections 77-5701 to 77-5735 and section 3 of this  
4 act shall be known and may be cited as the Nebraska Advantage Act.

5           Sec. 2. Section 77-5703, Reissue Revised Statutes of  
6 Nebraska, is amended to read:

7           77-5703 For purposes of the Nebraska Advantage Act, the  
8 definitions found in sections 77-5704 to 77-5721 and section 3 of  
9 this act shall be used.

10           Sec. 3. Data center means computers, supporting  
11 equipment, and other organized assembly of hardware or software that  
12 are designed to centralize the storage, management, or dissemination  
13 of data and information, environmentally controlled structures or  
14 facilities or interrelated structures or facilities that provide the  
15 infrastructure for housing the equipment, such as raised flooring,  
16 electricity supply, communication and data lines, Internet access,  
17 cooling, security, and fire suppression, and any building housing the  
18 foregoing. A data center also includes a facility described in this  
19 section for the co-location of computers.

20           Sec. 4. Section 77-5715, Revised Statutes Cumulative  
21 Supplement, 2010, is amended to read:

22           77-5715 (1) For a tier 2, tier 3, tier 4, or tier 5  
23 project, qualified business means any business engaged in:

24           (a) The conducting of research, development, or testing  
25 for scientific, agricultural, animal husbandry, food product, or

1 industrial purposes;

2 (b) The performance of data processing,  
3 telecommunication, insurance, or financial services. For purposes of  
4 this subdivision, financial services includes only financial services  
5 provided by any financial institution subject to tax under Chapter  
6 77, article 38, or any person or entity licensed by the Department of  
7 Banking and Finance or the federal Securities and Exchange Commission  
8 and telecommunication services includes community antenna television  
9 service, Internet access, satellite ground station, ~~data center~~, call  
10 center, or telemarketing;

11 (c) The assembly, fabrication, manufacture, or processing  
12 of tangible personal property;

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

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

22 (f) The sale of tangible personal property if the  
23 taxpayer derives at least seventy-five percent or more of the sales  
24 or revenue attributable to such activities relating to the project  
25 from sales to consumers who are not related persons and are located

1 outside the state;

2 (g) The sale of software development services, computer  
3 systems design, product testing services, or guidance or surveillance  
4 systems design services or the licensing of technology if the  
5 taxpayer derives at least seventy-five percent of the sales or  
6 revenue attributable to such activities relating to the project from  
7 sales or licensing either to customers who are not related persons  
8 and located outside the state or to the United States Government,  
9 including sales of such services, systems, or products delivered by  
10 providing the customer with software or access to software over the  
11 Internet or by other electronic means, regardless of whether the  
12 software or data accessed by customers is stored on a computer owned  
13 by the applicant, the customer, or a third party and regardless of  
14 whether the computer storing the software or data is located at the  
15 project;

16 (h) The research, development, and maintenance of an  
17 Internet web portal. For purposes of this subdivision, Internet web  
18 portal means an Internet site that allows users to access, search,  
19 and navigate the Internet;

20 (i) The research, development, and maintenance of a data  
21 center; ~~. For purposes of this subdivision, data center means a group~~  
22 ~~of computers, supporting equipment, and other organized assembly of~~  
23 ~~hardware or software in one or more interrelated physical locations~~  
24 ~~that is designed to centralize the storage, management, or~~  
25 ~~dissemination of data and information; or~~

1           (j) Any combination of the activities listed in this  
2 subsection.

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

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

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

10           (c) The sale of software development services, computer  
11 systems design, product testing services, or guidance or surveillance  
12 systems design services or the licensing of technology if the  
13 taxpayer derives at least seventy-five percent of the sales or  
14 revenue attributable to such activities relating to the project from  
15 sales or licensing either to customers who are not related persons  
16 and are located outside the state or to the United States Government,  
17 including sales of such services, systems, or products delivered by  
18 providing the customer with software or access to software over the  
19 Internet or by other electronic means, regardless of whether the  
20 software or data accessed by customers is stored on a computer owned  
21 by the applicant, the customer, or a third party and regardless of  
22 whether the computer storing the software or data is located at the  
23 project; or

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

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

4                   (4) Except for business activity described in subdivision  
5 (1)(f) of this section, qualified business does not include any  
6 business activity in which eighty percent or more of the total sales  
7 are sales to the ultimate consumer of (a) food prepared for immediate  
8 consumption or (b) tangible personal property which is not assembled,  
9 fabricated, manufactured, or processed by the taxpayer or used by the  
10 purchaser in any of the activities listed in subsection (1) or (2) of  
11 this section.

12                   Sec. 5. Section 77-5725, Revised Statutes Cumulative  
13 Supplement, 2010, is amended to read:

14                   77-5725 (1) Applicants may qualify for benefits under the  
15 Nebraska Advantage Act in one of six tiers:

16                   (a) Tier 1, investment in qualified property of at least  
17 one million dollars and the hiring of at least ten new employees.  
18 There shall be no new project applications for benefits under this  
19 tier filed after December 31, 2015, without further authorization of  
20 the Legislature. All complete project applications filed on or before  
21 December 31, 2015, shall be considered by the Tax Commissioner and  
22 approved if the project and taxpayer qualify for benefits. Agreements  
23 may be executed with regard to completed project applications filed  
24 on or before December 31, 2015. All project agreements pending,  
25 approved, or entered into before such date shall continue in full

1 force and effect;

2 (b) Tier 2, (i) investment in qualified property of at  
3 least three million dollars and the hiring of at least thirty new  
4 employees or, (ii) for a large data center project investment in  
5 qualified property for the data center of at least three hundred  
6 million dollars and the hiring for the data center of at least thirty  
7 new employees;

8 (c) Tier 3, the hiring of at least thirty new employees.  
9 There shall be no new project applications for benefits under this  
10 tier filed after December 31, 2015, without further authorization of  
11 the Legislature. All complete project applications filed on or before  
12 December 31, 2015, shall be considered by the Tax Commissioner and  
13 approved if the project and taxpayer qualify for benefits. Agreements  
14 may be executed with regard to completed project applications filed  
15 on or before December 31, 2015. All project agreements pending,  
16 approved, or entered into before such date shall continue in full  
17 force and effect;

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

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

1           (f) Tier 6, investment in qualified property of at least  
2 ten million dollars and the hiring of at least seventy-five new  
3 employees or the investment in qualified property of at least one  
4 hundred million dollars and the hiring of at least fifty new  
5 employees. Agreements may be executed with regard to completed  
6 project applications filed before January 1, 2016. All project  
7 agreements pending, approved, or entered into before such date shall  
8 continue in full force and effect.

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

13           (a) A refund of all sales and use taxes for a tier 2,  
14 tier 4, tier 5, or tier 6 project or a refund of one-half of all  
15 sales and use taxes for a tier 1 project paid under the Local Option  
16 Revenue Act, the Nebraska Revenue Act of 1967, and sections 13-319,  
17 13-324, and 13-2813 from the date of the application through the  
18 meeting of the required levels of employment and investment for all  
19 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 a contractor or

1 repairperson after appointment as a purchasing agent of the owner of  
2 the improvement to real estate when such property is incorporated  
3 into real estate as a part of a project. The refund shall be based on  
4 fifty percent of the contract price, excluding any land, as the cost  
5 of materials subject to the sales and use tax;

6 (iv) Tangible personal property by a contractor or  
7 repairperson after appointment as a purchasing agent of the taxpayer  
8 when such property is annexed to, but not incorporated into, real  
9 estate as a part of a project. The refund shall be based on the cost  
10 of materials subject to the sales and use tax that were annexed to  
11 real estate; and

12 (v) Tangible personal property by a contractor or  
13 repairperson after appointment as a purchasing agent of the taxpayer  
14 when such property is both (A) incorporated into real estate as a  
15 part of a project and (B) annexed to, but not incorporated into, real  
16 estate as a part of a project. The refund shall be based on fifty  
17 percent of the contract price, excluding any land, as the cost of  
18 materials subject to the sales and use tax; and

19 (b) A refund of all sales and use taxes for a tier 2,  
20 tier 4, tier 5, or tier 6 project or a refund of one-half of all  
21 sales and use taxes for a tier 1 project paid under the Local Option  
22 Revenue Act, the Nebraska Revenue Act of 1967, and sections 13-319,  
23 13-324, and 13-2813 on the types of purchases, including rentals,  
24 listed in subdivision (a) of this subsection for such taxes paid  
25 during each year of the entitlement period in which the taxpayer is

1 at or above the required levels of employment and investment.

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

20 (a) Average annual wage means the total compensation paid  
21 to employees during the year at the project who are not base-year  
22 employees and who are paid wages equal to at least sixty percent of  
23 the Nebraska average weekly wage for the year of application,  
24 excluding any compensation in excess of one million dollars paid to  
25 any one employee during the year, divided by the number of equivalent

1 employees making up such total compensation;

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

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

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

15 (5) Any taxpayer who has met the required levels of  
16 employment and investment for a tier 2 or tier 4 project shall  
17 receive a credit equal to ten percent of the investment made in  
18 qualified property at the project. Any taxpayer who has met the  
19 required levels of investment and employment for a tier 1 project  
20 shall receive a credit equal to three percent of the investment made  
21 in qualified property at the project. Any taxpayer who has met the  
22 required levels of investment and employment for a tier 6 project  
23 shall receive a credit equal to fifteen percent of the investment  
24 made in qualified property at the project.

25 (6) The credits prescribed in subsections (3), (4), and

1 (5) of this section shall be allowable for compensation paid and  
2 investments made during each year of the entitlement period that the  
3 taxpayer is at or above the required levels of employment and  
4 investment.

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

10 (8)(a) Property described in subdivisions (8)(c)(i)  
11 through (v) of this section used in connection with a project or  
12 projects and acquired by the taxpayer, whether by lease or purchase,  
13 after the date the application was filed, shall constitute separate  
14 classes of property and are eligible for exemption under the  
15 conditions and for the time periods provided in subdivision (8)(b) of  
16 this section.

17 (b)(i) A taxpayer who has met the required levels of  
18 employment and investment for a tier 4 ~~or tier 6~~ project shall  
19 receive the incentive provided in this subsection. exemption of  
20 property in subdivisions (8)(c)(ii), (iii), and (iv) of this section.  
21 A taxpayer who has met the required levels of employment and  
22 investment for a tier 6 project shall receive the exemption of  
23 property in subdivisions (8)(c)(ii), (iii), (iv), and (v) of this  
24 section. Such property shall be eligible for the exemption from the  
25 first January 1 following the end of the year during which the

1 required levels were exceeded through the ninth December 31 after the  
2 first year property included in subdivisions (8)(c)(ii), (iii), (iv),  
3 and (v) of this section qualifies for the exemption.

4 (ii) A taxpayer who has filed an application that  
5 describes a tier 2 large data center project or a project under tier  
6 4 or tier 6 shall receive the exemption of property in subdivision  
7 (8)(c)(i) of this section beginning with the first January 1  
8 following the acquisition of the property. The exemption shall  
9 continue through the end of the period property included in  
10 subdivisions (8)(c)(ii), (iii), (iv), and (v) of this section  
11 qualifies for the exemption.

12 (iii) A taxpayer who has filed an application that  
13 describes a tier 2 large data center project or a tier 5 project that  
14 is at a location that was included as a part of a tier 2 large data  
15 center project for which the entitlement period has expired shall  
16 receive the exemption of all property in subdivision (8)(c) of this  
17 section beginning any January 1 after the acquisition of the  
18 property. Such property shall be eligible for exemption from the tax  
19 on personal property from the January 1 preceding the first claim for  
20 exemption approved under this subdivision through the ninth December  
21 31 after the year the first claim for exemption is approved.

22 (iv) A taxpayer who has a project for an Internet web  
23 portal or a data center and who has met the required levels of  
24 employment and investment for a tier 2 project or the required level  
25 of investment for a tier 5 project, taking into account only the

1 employment and investment at the web portal or data center project,  
2 shall receive the incentive provided in this subsection for exemption  
3 of property in subdivision ~~(8)(b)(ii)~~ (8)(c)(ii) of this section.  
4 Such property shall be eligible for the exemption from the first  
5 January 1 following the end of the year during which the required  
6 levels were exceeded through the ninth December 31 after the first  
7 year any property included in subdivisions (8)(c)(ii), (iii), (iv),  
8 and (v) of this section qualifies for the exemption.

9 (v) Such investment and hiring of new employees shall be  
10 considered a required level of investment and employment for this  
11 subsection and for the recapture of benefits under this subsection  
12 only.

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

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

21 (ii) Computer systems, made up of equipment that is  
22 interconnected in order to enable the acquisition, storage,  
23 manipulation, management, movement, control, display, transmission,  
24 or reception of data involving computer software and hardware, used  
25 for business information processing which require environmental

1 controls of temperature and power and which are capable of  
2 simultaneously supporting more than one transaction and more than one  
3 user. A computer system includes peripheral components which require  
4 environmental controls of temperature and power connected to such  
5 computer systems. Peripheral components shall be limited to  
6 additional memory units, tape drives, disk drives, power supplies,  
7 cooling units, data switches, and communication controllers;

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

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

16 (v) For a tier 2 large data center project or tier 6  
17 project, any other personal property located at the project.

18 ~~(c) Such property shall be eligible for exemption from~~  
19 ~~the tax on personal property from the first January 1 following the~~  
20 ~~date of acquisition for property in subdivision (8)(b)(i) of this~~  
21 ~~section, or from the first January 1 following the end of the year~~  
22 ~~during which the required levels were exceeded for property in~~  
23 ~~subdivisions (8)(b)(ii), (iii), (iv), and (v) of this section,~~  
24 ~~through the ninth December 31 after the first year any property~~  
25 ~~included in subdivisions (8)(b)(ii), (iii), (iv), and (v) of this~~

1 ~~section qualifies for the exemption.~~

2           (d) In order to receive the property tax exemptions  
3 allowed by subdivision ~~(8)(b)~~ (8)(c) of this section, the taxpayer  
4 shall annually file a claim for exemption with the Tax Commissioner  
5 on or before May 1. The form and supporting schedules shall be  
6 prescribed by the Tax Commissioner and shall list all property for  
7 which exemption is being sought under this section. A separate claim  
8 for exemption must be filed for each project and each county in which  
9 property is claimed to be exempt. A copy of this form must also be  
10 filed with the county assessor in each county in which the applicant  
11 is requesting exemption. The Tax Commissioner shall determine whether  
12 a taxpayer is eligible to obtain exemption for personal property  
13 based on the criteria for exemption and the eligibility of each item  
14 listed for exemption and, on or before August 1, certify such to the  
15 taxpayer and to the affected county assessor. ~~In determining the~~  
16 ~~eligibility of items of personal property for exemption, the Tax~~  
17 ~~Commissioner is limited to the question of whether the property~~  
18 ~~claimed as exempt by the taxpayer falls within the classes of~~  
19 ~~property described in subdivision (8)(b) of this section. The~~  
20 ~~determination of whether a taxpayer is eligible to obtain exemption~~  
21 ~~for personal property based on meeting the required levels of~~  
22 ~~investment and employment is the responsibility of the Tax~~  
23 ~~Commissioner.~~

24           (9)(a) The investment thresholds in this section for a  
25 particular year of application shall be adjusted by the method

1 provided in this subsection.

2 (b) For tier 1, tier 2, tier 4, and tier 5, beginning  
3 October 1, 2006, and each October 1 thereafter, the average Producer  
4 Price Index for all commodities, published by the United States  
5 Department of Labor, Bureau of Labor Statistics, for the most recent  
6 twelve available periods shall be divided by the Producer Price Index  
7 for the first quarter of 2006 and the result multiplied by the  
8 applicable investment threshold. The investment thresholds shall be  
9 adjusted for cumulative inflation since 2006.

10 (c) For tier 6, beginning October 1, 2008, and each  
11 October 1 thereafter, the average Producer Price Index for all  
12 commodities, published by the United States Department of Labor,  
13 Bureau of Labor Statistics, for the most recent twelve available  
14 periods shall be divided by the Producer Price Index for the first  
15 quarter of 2008 and the result multiplied by the applicable  
16 investment threshold. The investment thresholds shall be adjusted for  
17 cumulative inflation since 2008.

18 (d) For a tier 2 large data center project, beginning  
19 October 1, 2012, and each October 1 thereafter, the average Producer  
20 Price Index for all commodities, published by the United States  
21 Department of Labor, Bureau of Labor Statistics, for the most recent  
22 twelve available periods shall be divided by the Producer Price Index  
23 for the first quarter of 2012 and the result multiplied by the  
24 applicable investment threshold. The investment thresholds shall be  
25 adjusted for cumulative inflation since 2012.

1           ~~(d)~~(e) If the resulting amount is not a multiple of one  
2 million dollars, the amount shall be rounded to the next lowest one  
3 million dollars.

4           ~~(e)~~(f) The investment thresholds established by this  
5 subsection apply for purposes of project qualifications for all  
6 applications filed on or after January 1 of the following year for  
7 all years of the project. Adjustments do not apply to projects after  
8 the year of application.

9           Sec. 6. Section 77-5726, Revised Statutes Cumulative  
10 Supplement, 2010, is amended to read:

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

20           (b) The taxpayer may use the credit provided in  
21 subsection (3) of section 77-5725 to reduce the taxpayer's income tax  
22 withholding employer or payor tax liability under section 77-2756 or  
23 77-2757 to the extent such liability is attributable to the number of  
24 new employees at the project, excluding any compensation in excess of  
25 one million dollars paid to any one employee during the year. The

1 taxpayer may use the credit provided in subsection (4) of section  
2 77-5725 to reduce the taxpayer's income tax withholding employer or  
3 payor tax liability under section 77-2756 or 77-2757 to the extent  
4 such liability is attributable to all employees employed at the  
5 project, other than base-year employees and excluding any  
6 compensation in excess of one million dollars paid to any one  
7 employee during the year. To the extent of the credit used, such  
8 withholding shall not constitute public funds or state tax revenue  
9 and shall not constitute a trust fund or be owned by the state. The  
10 use by the taxpayer of the credit shall not change the amount that  
11 otherwise would be reported by the taxpayer to the employee under  
12 section 77-2754 as income tax withheld and shall not reduce the  
13 amount that otherwise would be allowed by the state as a refundable  
14 credit on an employee's income tax return as income tax withheld  
15 under section 77-2755.

16 For a tier 1, tier 2, tier 3, or tier 4 project, the  
17 amount of credits used against income tax withholding shall not  
18 exceed the withholding attributable to new employees employed at the  
19 project, excluding any compensation in excess of one million dollars  
20 paid to any one employee during the year.

21 For a tier 6 project, the amount of credits used against  
22 income tax withholding shall not exceed the withholding attributable  
23 to all employees employed at the project, other than base-year  
24 employees and excluding any compensation in excess of one million  
25 dollars paid to any one employee during the year.

1           If the amount of credit used by the taxpayer against  
2 income tax withholding exceeds this amount, the excess withholding  
3 shall be returned to the Department of Revenue in the manner provided  
4 in section 77-2756, such excess amount returned shall be considered  
5 unused, and the amount of unused credits may be used as otherwise  
6 permitted in this section or shall carry over to the extent  
7 authorized in subdivision (1)(e) of this section.

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

15           (d) The credits earned for a tier 6 project may be used  
16 to obtain a payment from the state equal to the real property taxes  
17 due after the year the required levels of employment and investment  
18 were met and before the end of the carryover period, for real  
19 property that is included in such project and acquired by the  
20 taxpayer, whether by lease or purchase, after the date the  
21 application was filed. Once the required levels of employment and  
22 investment for a tier 2 large data center project have been met, the  
23 credits earned for a tier 2 large data center project may be used to  
24 obtain a payment from the state equal to the real property taxes due  
25 after the year of application and before the end of the carryover

1 period, for real property that is included in such project and  
2 acquired by the taxpayer, whether by lease or purchase, after the  
3 date the application was filed. The payment from the state shall be  
4 made only after payment of the real property taxes have been made to  
5 the county as required by law. Payments shall not be allowed for any  
6 taxes paid on real property for which the taxes are divided under  
7 section 18-2147 or 58-507.

8 (e) Credits may be carried over until fully utilized,  
9 except that such credits may not be carried over more than nine years  
10 after the year of application for a tier 1 or tier 3 project,  
11 fourteen years after the year of application for a tier 2 or tier 4  
12 project, or more than one year past the end of the entitlement period  
13 for a tier 6 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 any  
18 claim for a refund in excess of twenty-five thousand dollars may be  
19 filed at any time.

20 (c) Refund claims for materials purchased by a purchasing  
21 agent shall include:

22 (i) A copy of the purchasing agent appointment;

23 (ii) The contract price; and

24 (iii)(A) For refunds under subdivision (2)(a)(iii) or (2)  
25 (a)(v) of section 77-5725, a certification by the contractor or

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

4 (B) For refunds under subdivision (2)(a)(iv) of section  
5 77-5725, a certification by the contractor or repairperson of the  
6 percentage of the contract price that represents the cost of  
7 materials annexed to the project and the percentage of the materials  
8 annexed to the project on which sales and use taxes were paid to  
9 Nebraska after appointment as purchasing agent.

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

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

1 claims of sales and use taxes under the Local Option Revenue Act or  
2 sections 13-319, 13-324, and 13-2813 that are in excess of twenty-  
3 five thousand dollars on or before July 1 of the year before the  
4 claims will be paid under this section.

5 (f) Interest shall not be allowed on any taxes refunded  
6 under the Nebraska Advantage Act.

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

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

1                   Sec. 7. Section 77-5727, Reissue Revised Statutes of  
2 Nebraska, is amended to read:

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

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

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

1 disallowed. The amount of the recapture shall be a percentage equal  
2 to the number of years the taxpayer did not maintain the project at  
3 or above the required levels of investment and employment divided by  
4 the number of years of the project's entitlement period multiplied by  
5 the refunds allowed, reduction in personal property tax, the credits  
6 used, and the remaining carryovers. In addition, the last remaining  
7 year of personal property tax exemption shall be disallowed for each  
8 year the taxpayer did not maintain such project at or above the  
9 required levels of employment or investment.

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

1 dividing the result by seven.

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

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

15 ~~(6) Any (6)(a) Except as provided in subdivision (6)(b)~~  
16 of this section, any personal property tax that would have been due  
17 except for the exemption allowed under the Nebraska Advantage Act, to  
18 the extent it becomes due under this section, shall be considered  
19 delinquent and shall be immediately due and payable to the county or  
20 counties in which the property was located when exempted.

21 (b) For a tier 2 large data center project, any personal  
22 property tax that would have been due except for the exemption under  
23 the Nebraska Advantage Act, together with interest at the rate  
24 provided in section 45-104.01 from the original delinquency date of  
25 the tax that would have been due until the date paid, to the extent

1 it becomes due under this section, shall be considered delinquent and  
2 shall be immediately payable to the county or counties in which the  
3 property was located when exempted.

4 (c) All amounts received by a county under this section  
5 shall be allocated to each taxing unit levying taxes on tangible  
6 personal property in the county in the same proportion that the levy  
7 on tangible personal property of such taxing unit bears to the total  
8 levy of all of such taxing units.

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

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

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

20 Sec. 8. Section 77-5735, Revised Statutes Cumulative  
21 Supplement, 2010, is amended to read:

22 77-5735 (1) The changes made in sections 77-5703,  
23 77-5708, 77-5712, 77-5714, 77-5715, 77-5723, 77-5725, 77-5726,  
24 77-5727, and 77-5731 by Laws 2008, LB 895, and sections 77-5707.01,  
25 77-5719.01, and 77-5719.02 apply to all applications filed on and

1 after April 18, 2008. For all applications filed prior to such date,  
2 the provisions of the Nebraska Advantage Act as they existed  
3 immediately prior to such date apply.

4 (2) The changes made in sections 77-5725 and 77-5726 by  
5 Laws 2010, LB879, apply to all applications filed on or after July  
6 15, 2010. For all applications filed prior to such date, the taxpayer  
7 may make a one-time election, within the time period prescribed by  
8 the Tax Commissioner, to have the changes made in sections 77-5725  
9 and 77-5726 by Laws 2010, LB879, apply to such taxpayer's  
10 application, or in the absence of such an election, the provisions of  
11 the Nebraska Advantage Act as they existed immediately prior to July  
12 15, 2010, apply to such application.

13 (3) The changes made in sections 77-5707, 77-5715,  
14 77-5719, and 77-5725 by Laws 2010, LB918, apply to all applications  
15 filed on or after July 15, 2010. For all applications filed prior to  
16 such date, the provisions of the Nebraska Advantage Act as they  
17 existed immediately prior to such date apply.

18 (4) The changes made in sections 77-5701, 77-5703,  
19 77-5715, 77-5725, 77-5726, and 77-5727 by this legislative bill apply  
20 to all applications filed on or after the effective date of this act.  
21 For all applications filed prior to such date, the provisions of the  
22 Nebraska Advantage Act as they existed immediately prior to such date  
23 apply.

24 Sec. 9. Original sections 77-5701, 77-5703, and 77-5727,  
25 Reissue Revised Statutes of Nebraska, and sections 77-5715, 77-5725,

1 77-5726, and 77-5735, Revised Statutes Cumulative Supplement, 2010,  
2 are repealed

3                   Sec. 10. Since an emergency exists, this act takes effect  
4 when passed and approved according to law.