

LEGISLATURE OF NEBRASKA
ONE HUNDRED FIFTH LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 1023

Introduced by Schumacher, 22.

Read first time January 16, 2018

Committee: Revenue

1 A BILL FOR AN ACT relating to revenue and taxation; to amend section
2 13-204, Reissue Revised Statutes of Nebraska, sections 77-1116,
3 77-27,187.02, 77-2912, 77-5208, and 77-5806, Revised Statutes
4 Cumulative Supplement, 2016, and sections 77-5725, 77-5905, and
5 77-6306, Revised Statutes Supplement, 2017; to provide and change
6 sunset dates on certain tax incentive programs; to harmonize
7 provisions; and to repeal the original sections.
8 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 13-204, Reissue Revised Statutes of Nebraska, is
2 amended to read:

3 13-204 Any community betterment organization which provides
4 community assistance or community services in a community development
5 area may apply any time during the fiscal year to the department to have
6 one or more programs certified for tax credit status as provided in
7 sections 13-205 to 13-208, except that there shall be no new applications
8 for such certification filed under this section after December 31, 2018.

9 The proposal shall set forth the program to be conducted, the community
10 development area, the estimated amount to be required for completion of
11 the program or the annual estimated amount required for an ongoing
12 program, the plans for implementing the program, and the amount of
13 contributions committed or anticipated for such activities or services.

14 Sec. 2. Section 77-1116, Revised Statutes Cumulative Supplement,
15 2016, is amended to read:

16 77-1116 (1) A qualified community development entity that seeks to
17 have an equity investment or long-term debt security designated as a
18 qualified equity investment and eligible for tax credits under the New
19 Markets Job Growth Investment Act shall apply to the Tax Commissioner.
20 There shall be no new applications for such designation filed under this
21 section after December 31, 2018 ~~2022~~.

22 (2) The qualified community development entity shall submit an
23 application on a form that the Tax Commissioner provides that includes:

24 (a) Evidence of the entity's certification as a qualified community
25 development entity, including evidence of the service area of the entity
26 that includes this state;

27 (b) A copy of the allocation agreement executed by the entity, or
28 its controlling entity, and the Community Development Financial
29 Institutions Fund referred to in section 77-1109;

30 (c) A certificate executed by an executive officer of the entity
31 attesting that the allocation agreement remains in effect and has not

1 been revoked or canceled by the Community Development Financial
2 Institutions Fund referred to in section 77-1109;

3 (d) A description of the proposed amount, structure, and purchaser
4 of the equity investment or long-term debt security;

5 (e) Identifying information for any taxpayer eligible to utilize tax
6 credits earned as a result of the issuance of the qualified equity
7 investment;

8 (f) Information regarding the proposed use of proceeds from the
9 issuance of the qualified equity investment; and

10 (g) A nonrefundable application fee of five thousand dollars.

11 (3) Within thirty days after receipt of a completed application
12 containing the information necessary for the Tax Commissioner to certify
13 a potential qualified equity investment, including the payment of the
14 application fee, the Tax Commissioner shall grant or deny the application
15 in full or in part. If the Tax Commissioner denies any part of the
16 application, the Tax Commissioner shall inform the qualified community
17 development entity of the grounds for the denial. If the qualified
18 community development entity provides any additional information required
19 by the Tax Commissioner or otherwise completes its application within
20 fifteen days after the notice of denial, the application shall be
21 considered completed as of the original date of submission. If the
22 qualified community development entity fails to provide the information
23 or complete its application within the fifteen-day period, the
24 application remains denied and must be resubmitted in full with a new
25 submission date.

26 (4) If the application is deemed complete, the Tax Commissioner
27 shall certify the proposed equity investment or long-term debt security
28 as a qualified equity investment that is eligible for tax credits,
29 subject to the limitations contained in section 77-1115. The Tax
30 Commissioner shall provide written notice of the certification to the
31 qualified community development entity. The notice shall include the

1 names of those taxpayers who are eligible to utilize the credits and
2 their respective credit amounts. If the names of the taxpayers who are
3 eligible to utilize the credits change due to a transfer of a qualified
4 equity investment or a change in an allocation pursuant to section
5 77-1114, the qualified community development entity shall notify the Tax
6 Commissioner of such change.

7 (5) The Tax Commissioner shall certify qualified equity investments
8 in the order applications are received. Applications received on the same
9 day shall be deemed to have been received simultaneously. For
10 applications received on the same day and deemed complete, the Tax
11 Commissioner shall certify, consistent with remaining tax credit
12 capacity, qualified equity investments in proportionate percentages based
13 upon the ratio of the amount of qualified equity investment requested in
14 an application to the total amount of qualified equity investments
15 requested in all applications received on the same day.

16 (6) Once the Tax Commissioner has certified qualified equity
17 investments that, on a cumulative basis, are eligible for the maximum
18 limitation contained in section 77-1115, the Tax Commissioner may not
19 certify any more qualified equity investments for that fiscal year. If a
20 pending request cannot be fully certified, the Tax Commissioner shall
21 certify the portion that may be certified unless the qualified community
22 development entity elects to withdraw its request rather than receive
23 partial credit.

24 (7) Within thirty days after receiving notice of certification, the
25 qualified community development entity shall issue the qualified equity
26 investment and receive cash in the amount of the certified amount. The
27 qualified community development entity shall provide the Tax Commissioner
28 with evidence of the receipt of the cash investment within ten business
29 days after receipt. If the qualified community development entity does
30 not receive the cash investment and issue the qualified equity investment
31 within thirty days after receipt of the certification notice, the

1 certification shall lapse and the entity may not issue the qualified
2 equity investment without reapplying to the Tax Commissioner for
3 certification. A certification that lapses reverts back to the Tax
4 Commissioner and may be reissued only in accordance with the application
5 process outlined in this section.

6 Sec. 3. Section 77-27,187.02, Revised Statutes Cumulative
7 Supplement, 2016, is amended to read:

8 77-27,187.02 (1) To earn the incentives set forth in the Nebraska
9 Advantage Rural Development Act, the taxpayer shall file an application
10 for an agreement with the Tax Commissioner. There shall be no new
11 applications for incentives filed under this section after December 31,
12 2018 ~~2022~~.

13 (2) The application shall contain:

14 (a) A written statement describing the full expected employment or
15 type of livestock production and the investment amount for a qualified
16 business, as described in section 77-27,189, in this state;

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

19 (c) An application fee of five hundred dollars. The fee shall be
20 remitted to the State Treasurer for credit to the Nebraska Incentives
21 Fund. The application and all supporting information shall be
22 confidential except for the name of the taxpayer, the location of the
23 project, and the amounts of increased employment or investment.

24 (3)(a) The Tax Commissioner shall approve the application and
25 authorize the total amount of credits expected to be earned as a result
26 of the project if he or she is satisfied that the plan in the application
27 defines a project that (i) meets the requirements established in section
28 77-27,188 and such requirements will be reached within the required time
29 period and (ii) for projects other than livestock modernization or
30 expansion projects, is located in an eligible county, city, or village.

31 (b) For applications filed in calendar year 2015, the Tax

1 Commissioner shall not approve further applications once the expected
2 credits from the approved projects total one million dollars. For
3 applications filed in calendar year 2016 and each year thereafter, the
4 Tax Commissioner shall not approve further applications from applicants
5 described in subsection (1) of section 77-27,188 once the expected
6 credits from approved projects from this category total one million
7 dollars. For applications filed in calendar year 2016 and each year
8 thereafter, the Tax Commissioner shall not approve further applications
9 from applicants described in subsection (2) of section 77-27,188 once the
10 expected credits from approved projects in this category total: For
11 calendar year 2016, five hundred thousand dollars; and for calendar years
12 2017 and 2018, seven hundred fifty thousand dollars. ~~; and for calendar~~
13 ~~year 2019 and each calendar year thereafter, one million dollars.~~ Four
14 hundred dollars of the application fee shall be refunded to the applicant
15 if the application is not approved because the expected credits from
16 approved projects exceed such amounts.

17 (c) Applications for benefits shall be considered separately and in
18 the order in which they are received for the categories represented by
19 subsections (1) and (2) of section 77-27,188.

20 (d) Applications shall be filed by November 1 and shall be complete
21 by December 1 of each calendar year. Any application that is filed after
22 November 1 or that is not complete on December 1 shall be considered to
23 be filed during the following calendar year.

24 (4) After approval, the taxpayer and the Tax Commissioner shall
25 enter into a written agreement. The taxpayer shall agree to complete the
26 project, and the Tax Commissioner, on behalf of the State of Nebraska,
27 shall designate the approved plans of the taxpayer as a project and, in
28 consideration of the taxpayer's agreement, agree to allow the taxpayer to
29 use the incentives contained in the Nebraska Advantage Rural Development
30 Act up to the total amount that were authorized by the Tax Commissioner
31 at the time of approval. The application, and all supporting

1 documentation, to the extent approved, shall be considered a part of the
2 agreement. The agreement shall state:

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

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

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

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

10 (e) The maximum amount of credits authorized.

11 Sec. 4. Section 77-2912, Revised Statutes Cumulative Supplement,
12 2016, is amended to read:

13 77-2912 There shall be no new applications filed under the Nebraska
14 Job Creation and Mainstreet Revitalization Act after December 31, 2018
15 ~~2022~~. All applications and all credits pending or approved before such
16 date shall continue in full force and effect, except that no credits
17 shall be allocated under section 77-2905, issued under section 77-2906,
18 or used on any tax return or similar filing after December 31, 2027.

19 Sec. 5. Section 77-5208, Revised Statutes Cumulative Supplement,
20 2016, is amended to read:

21 77-5208 The board shall meet at least twice during the year. The
22 board shall review pending applications in order to approve and certify
23 beginning farmers and livestock producers as eligible for the programs
24 provided by the board, to approve and certify owners of agricultural
25 assets as eligible for the tax credits authorized by sections 77-5211 to
26 77-5213, and to approve and certify qualified beginning farmers and
27 livestock producers as eligible for the tax credit authorized by section
28 77-5209.01 and for qualification to claim an exemption of taxable
29 tangible personal property as provided by section 77-5209.02. No new
30 applications for any such programs, tax credits, or exemptions shall be
31 approved or certified by the board after December 31, 2018 ~~2022~~. Any

1 action taken by the board regarding approval and certification of program
2 eligibility, granting of tax credits, or termination of rental agreements
3 shall require the affirmative vote of at least four members of the board.

4 Sec. 6. Section 77-5725, Revised Statutes Supplement, 2017, is
5 amended to read:

6 77-5725 (1) Applicants may qualify for benefits under the Nebraska
7 Advantage Act in one of six tiers:

8 (a) Tier 1, investment in qualified property of at least one million
9 dollars and the hiring of at least ten new employees. There shall be no
10 new project applications for benefits under this tier filed after
11 December 31, 2018 ~~2020~~. All complete project applications filed on or
12 before December 31, 2018 ~~2020~~, shall be considered by the Tax
13 Commissioner and approved if the project and taxpayer qualify for
14 benefits. Agreements may be executed with regard to completed project
15 applications filed on or before December 31, 2018 ~~2020~~. All project
16 agreements pending, approved, or entered into before such date shall
17 continue in full force and effect;

18 (b) Tier 2, (i) investment in qualified property of at least three
19 million dollars and the hiring of at least thirty new employees or (ii)
20 for a large data center project, investment in qualified property for the
21 data center of at least two hundred million dollars and the hiring for
22 the data center of at least thirty new employees. There shall be no new
23 project applications for benefits under this tier filed after December
24 31, 2018 ~~2020~~. All complete project applications filed on or before
25 December 31, 2018 ~~2020~~, shall be considered by the Tax Commissioner and
26 approved if the project and taxpayer qualify for benefits. Agreements may
27 be executed with regard to completed project applications filed on or
28 before December 31, 2018 ~~2020~~. All project agreements pending, approved,
29 or entered into before such date shall continue in full force and effect;

30 (c) Tier 3, the hiring of at least thirty new employees. There shall
31 be no new project applications for benefits under this tier filed after

1 December 31, 2018 ~~2020~~. All complete project applications filed on or
2 before December 31, 2018 ~~2020~~, shall be considered by the Tax
3 Commissioner and approved if the project and taxpayer qualify for
4 benefits. Agreements may be executed with regard to completed project
5 applications filed on or before December 31, 2018 ~~2020~~. All project
6 agreements pending, approved, or entered into before such date shall
7 continue in full force and effect;

8 (d) Tier 4, investment in qualified property of at least ten million
9 dollars and the hiring of at least one hundred new employees. There shall
10 be no new project applications for benefits under this tier filed after
11 December 31, 2018 ~~2020~~. All complete project applications filed on or
12 before December 31, 2018 ~~2020~~, shall be considered by the Tax
13 Commissioner and approved if the project and taxpayer qualify for
14 benefits. Agreements may be executed with regard to completed project
15 applications filed on or before December 31, 2018 ~~2020~~. All project
16 agreements pending, approved, or entered into before such date shall
17 continue in full force and effect;

18 (e) Tier 5, (i) investment in qualified property of at least thirty
19 million dollars or (ii) for the production of electricity by using one or
20 more sources of renewable energy to produce electricity for sale as
21 described in subdivision (1)(j) of section 77-5715, investment in
22 qualified property of at least twenty million dollars. Failure to
23 maintain an average number of equivalent employees as defined in section
24 77-5727 greater than or equal to the number of equivalent employees in
25 the base year shall result in a partial recapture of benefits. There
26 shall be no new project applications for benefits under this tier filed
27 after December 31, 2018 ~~2020~~. All complete project applications filed on
28 or before December 31, 2018 ~~2020~~, shall be considered by the Tax
29 Commissioner and approved if the project and taxpayer qualify for
30 benefits. Agreements may be executed with regard to completed project
31 applications filed on or before December 31, 2018 ~~2020~~. All project

1 agreements pending, approved, or entered into before such date shall
2 continue in full force and effect; and

3 (f) Tier 6, investment in qualified property of at least ten million
4 dollars and the hiring of at least seventy-five new employees or the
5 investment in qualified property of at least one hundred million dollars
6 and the hiring of at least fifty new employees. There shall be no new
7 project applications for benefits under this tier filed after December
8 31, 2018 ~~2020~~. All complete project applications filed on or before
9 December 31, 2018 ~~2020~~, shall be considered by the Tax Commissioner and
10 approved if the project and taxpayer qualify for benefits. Agreements may
11 be executed with regard to completed project applications filed on or
12 before December 31, 2018 ~~2020~~. All project agreements pending, approved,
13 or entered into before such date shall continue in full force and effect.

14 (2) When the taxpayer has met the required levels of employment and
15 investment contained in the agreement for a tier 1, tier 2, tier 4, tier
16 5, or tier 6 project, the taxpayer shall be entitled to the following
17 incentives:

18 (a) A refund of all sales and use taxes for a tier 2, tier 4, tier
19 5, or tier 6 project or a refund of one-half of all sales and use taxes
20 for a tier 1 project paid under the Local Option Revenue Act, the
21 Nebraska Revenue Act of 1967, and sections 13-319, 13-324, and 13-2813
22 from the date of the application through the meeting of the required
23 levels of employment and investment for all purchases, including rentals,
24 of:

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

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

30 (iii) Tangible personal property by a contractor or repairperson
31 after appointment as a purchasing agent of the owner of the improvement

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

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

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

17 (b) A refund of all sales and use taxes for a tier 2, tier 4, tier
18 5, or tier 6 project or a refund of one-half of all sales and use taxes
19 for a tier 1 project paid under the Local Option Revenue Act, the
20 Nebraska Revenue Act of 1967, and sections 13-319, 13-324, and 13-2813 on
21 the types of purchases, including rentals, listed in subdivision (a) of
22 this subsection for such taxes paid during each year of the entitlement
23 period in which the taxpayer is at or above the required levels of
24 employment and investment.

25 (3) Any taxpayer who qualifies for a tier 1, tier 2, tier 3, or tier
26 4 project shall be entitled to a credit equal to three percent times the
27 average wage of new employees times the number of new employees if the
28 average wage of the new employees equals at least sixty percent of the
29 Nebraska average annual wage for the year of application. The credit
30 shall equal four percent times the average wage of new employees times
31 the number of new employees if the average wage of the new employees

1 equals at least seventy-five percent of the Nebraska average annual wage
2 for the year of application. The credit shall equal five percent times
3 the average wage of new employees times the number of new employees if
4 the average wage of the new employees equals at least one hundred percent
5 of the Nebraska average annual wage for the year of application. The
6 credit shall equal six percent times the average wage of new employees
7 times the number of new employees if the average wage of the new
8 employees equals at least one hundred twenty-five percent of the Nebraska
9 average annual wage for the year of application. For computation of such
10 credit:

11 (a) Average annual wage means the total compensation paid to
12 employees during the year at the project who are not base-year employees
13 and who are paid wages equal to at least sixty percent of the Nebraska
14 average weekly wage for the year of application, excluding any
15 compensation in excess of one million dollars paid to any one employee
16 during the year, divided by the number of equivalent employees making up
17 such total compensation;

18 (b) Average wage of new employees means the average annual wage paid
19 to employees during the year at the project who are not base-year
20 employees and who are paid wages equal to at least sixty percent of the
21 Nebraska average weekly wage for the year of application, excluding any
22 compensation in excess of one million dollars paid to any one employee
23 during the year; and

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

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

31 (5) Any taxpayer who has met the required levels of employment and

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

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

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

18 (8)(a) Property described in subdivisions (8)(c)(i) through (v) of
19 this section used in connection with a project or projects, whether
20 purchased or leased, and placed in service by the taxpayer after the date
21 the application was filed shall constitute separate classes of property
22 and are eligible for exemption under the conditions and for the time
23 periods provided in subdivision (8)(b) of this section.

24 (b)(i) A taxpayer who has met the required levels of employment and
25 investment for a tier 4 project shall receive the exemption of property
26 in subdivisions (8)(c)(ii), (iii), and (iv) of this section. A taxpayer
27 who has met the required levels of employment and investment for a tier 6
28 project shall receive the exemption of property in subdivisions (8)(c)
29 (ii), (iii), (iv), and (v) of this section. Such property shall be
30 eligible for the exemption from the first January 1 following the end of
31 the year during which the required levels were exceeded through the ninth

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

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

10 (iii) A taxpayer who has filed an application that describes a tier
11 2 large data center project or a tier 5 project that is sequential to a
12 tier 2 large data center project for which the entitlement period has
13 expired shall receive the exemption of all property in subdivision (8)(c)
14 of this section beginning any January 1 after the date the property was
15 placed in service. Such property shall be eligible for exemption from the
16 tax on personal property from the January 1 preceding the first claim for
17 exemption approved under this subdivision through the ninth December 31
18 after the year the first claim for exemption is approved.

19 (iv) A taxpayer who has a project for an Internet web portal or a
20 data center and who has met the required levels of employment and
21 investment for a tier 2 project or the required level of investment for a
22 tier 5 project, taking into account only the employment and investment at
23 the web portal or data center project, shall receive the exemption of
24 property in subdivision (8)(c)(ii) of this section. Such property shall
25 be eligible for the exemption from the first January 1 following the end
26 of the year during which the required levels were exceeded through the
27 ninth December 31 after the first year any property included in
28 subdivisions (8)(c)(ii), (iii), (iv), and (v) of this section qualifies
29 for the exemption.

30 (v) Such investment and hiring of new employees shall be considered
31 a required level of investment and employment for this subsection and for

1 the recapture of benefits under this subsection only.

2 (c) The following property used in connection with such project or
3 projects, whether purchased or leased, and placed in service by the
4 taxpayer after the date the application was filed shall constitute
5 separate classes of personal property:

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

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

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

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

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

28 (d) In order to receive the property tax exemptions allowed by
29 subdivision (8)(c) of this section, the taxpayer shall annually file a
30 claim for exemption with the Tax Commissioner on or before May 1. The
31 form and supporting schedules shall be prescribed by the Tax Commissioner

1 and shall list all property for which exemption is being sought under
2 this section. A separate claim for exemption must be filed for each
3 project and each county in which property is claimed to be exempt. A copy
4 of this form must also be filed with the county assessor in each county
5 in which the applicant is requesting exemption. The Tax Commissioner
6 shall determine whether a taxpayer is eligible to obtain exemption for
7 personal property based on the criteria for exemption and the eligibility
8 of each item listed for exemption and, on or before August 1, certify
9 such to the taxpayer and to the affected county assessor.

10 (9)(a) The investment thresholds in this section for a particular
11 year of application shall be adjusted by the method provided in this
12 subsection, except that the investment threshold for a tier 5 project
13 described in subdivision (1)(e)(ii) of this section shall not be
14 adjusted.

15 (b) For tier 1, tier 2, tier 4, and tier 5 projects other than tier
16 5 projects described in subdivision (1)(e)(ii) of this section, beginning
17 October 1, 2006, and each October 1 thereafter, the average Producer
18 Price Index for all commodities, published by the United States
19 Department of Labor, Bureau of Labor Statistics, for the most recent
20 twelve available periods shall be divided by the Producer Price Index for
21 the first quarter of 2006 and the result multiplied by the applicable
22 investment threshold. The investment thresholds shall be adjusted for
23 cumulative inflation since 2006.

24 (c) For tier 6, beginning October 1, 2008, and each October 1
25 thereafter, the average Producer Price Index for all commodities,
26 published by the United States Department of Labor, Bureau of Labor
27 Statistics, for the most recent twelve available periods shall be divided
28 by the Producer Price Index for the first quarter of 2008 and the result
29 multiplied by the applicable investment threshold. The investment
30 thresholds shall be adjusted for cumulative inflation since 2008.

31 (d) For a tier 2 large data center project, beginning October 1,

1 2012, and each October 1 thereafter, the average Producer Price Index for
2 all commodities, published by the United States Department of Labor,
3 Bureau of Labor Statistics, for the most recent twelve available periods
4 shall be divided by the Producer Price Index for the first quarter of
5 2012 and the result multiplied by the applicable investment threshold.
6 The investment thresholds shall be adjusted for cumulative inflation
7 since 2012.

8 (e) If the resulting amount is not a multiple of one million
9 dollars, the amount shall be rounded to the next lowest one million
10 dollars.

11 (f) The investment thresholds established by this subsection apply
12 for purposes of project qualifications for all applications filed on or
13 after January 1 of the following year for all years of the project.
14 Adjustments do not apply to projects after the year of application.

15 Sec. 7. Section 77-5806, Revised Statutes Cumulative Supplement,
16 2016, is amended to read:

17 77-5806 The Nebraska Advantage Research and Development Act shall be
18 operative for all tax years beginning or deemed to begin on or after
19 January 1, 2006, under the Internal Revenue Code of 1986, as amended. No
20 business firm shall be allowed to first claim the credit for any tax year
21 beginning or deemed to begin after December 31, 2018 2022, under the
22 Internal Revenue Code of 1986, as amended.

23 Sec. 8. Section 77-5905, Revised Statutes Supplement, 2017, is
24 amended to read:

25 77-5905 (1) If the Department of Revenue determines that an
26 application meets the requirements of section 77-5904 and that the
27 investment or employment is eligible for the credit and (a) the applicant
28 is actively engaged in the operation of the microbusiness or will be
29 actively engaged in the operation upon its establishment, (b) the
30 applicant will make new investment or employment in the microbusiness,
31 and (c) the new investment or employment will create new income or jobs,

1 the department shall approve the application and authorize tentative tax
2 credits to the applicant within the limits set forth in this section and
3 certify the amount of tentative tax credits approved for the applicant.
4 Applications for tax credits shall be considered in the order in which
5 they are received.

6 (2) The department may approve applications up to the adjusted limit
7 for each calendar year beginning January 1, 2006, through December 31,
8 ~~2018~~ 2022. After applications totaling the adjusted limit have been
9 approved for a calendar year, no further applications shall be approved
10 for that year. The adjusted limit in a given year is two million dollars
11 plus tentative tax credits that were not granted by the end of the
12 preceding year. Tax credits shall not be allowed for a taxpayer receiving
13 benefits under the Employment and Investment Growth Act, the Nebraska
14 Advantage Act, or the Nebraska Advantage Rural Development Act.

15 Sec. 9. Section 77-6306, Revised Statutes Supplement, 2017, is
16 amended to read:

17 77-6306 (1) A qualified investor or qualified fund is eligible for a
18 refundable tax credit equal to forty percent of its qualified investment
19 in a qualified small business. The director shall not allocate more than
20 four million dollars in tax credits to all qualified investors or
21 qualified funds in a calendar year. If the director does not allocate the
22 entire four million dollars of tax credits in a calendar year, the tax
23 credits that are not allocated shall not carry forward to subsequent
24 years. The director shall not allocate any amount for tax credits for
25 calendar years after ~~2018~~ 2022.

26 (2) The director shall not allocate more than a total maximum amount
27 in tax credits for a calendar year to a qualified investor for the
28 investor's cumulative qualified investments as an individual qualified
29 investor and as an investor in a qualified fund as provided in this
30 subsection. For married couples filing joint returns the maximum is three
31 hundred fifty thousand dollars, and for all other filers the maximum is

1 three hundred thousand dollars. The director shall not allocate more than
2 a total of one million dollars in tax credits for qualified investments
3 in any one qualified small business.

4 (3) The director shall not allocate a tax credit to a qualified
5 investor either as an individual qualified investor or as an investor in
6 a qualified fund if the investor receives more than forty-nine percent of
7 the investor's gross annual income from the qualified small business in
8 which the qualified investment is proposed. A family member of an
9 individual disqualified by this subsection is not eligible for a tax
10 credit under this section. For a married couple filing a joint return,
11 the limitations in this subsection apply collectively to the investor and
12 spouse. For purposes of determining the ownership interest of an investor
13 under this subsection, the rules under section 267(c) and (e) of the
14 Internal Revenue Code of 1986, as amended, apply.

15 (4) Tax credits shall be allocated to qualified investors or
16 qualified funds in the order that the tax credit applications are filed
17 with the director. Once tax credits have been approved and allocated by
18 the director, the qualified investors and qualified funds shall implement
19 the qualified investment specified within ninety days after allocation of
20 the tax credits. Qualified investors and qualified funds shall notify the
21 director no later than thirty days after the expiration of the ninety-day
22 period that the qualified investment has been made. If the qualified
23 investment is not made within ninety days after allocation of the tax
24 credits, or the director has not, within thirty days following expiration
25 of the ninety-day period, received notification that the qualified
26 investment was made, the tax credit allocation is canceled and available
27 for reallocation. A qualified investor or qualified fund that fails to
28 invest as specified in the application within ninety days after
29 allocation of the tax credits shall notify the director of the failure to
30 invest within five business days after the expiration of the ninety-day
31 investment period.

1 (5) All tax credit applications filed with the director on the same
2 day shall be treated as having been filed contemporaneously. If two or
3 more qualified investors or qualified funds file tax credit applications
4 on the same day and the aggregate amount of tax credit allocation
5 requests exceeds the aggregate limit of tax credits under this section or
6 the lesser amount of tax credits that remain unallocated on that day,
7 then the tax credits shall be allocated among the qualified investors or
8 qualified funds who filed on that day on a pro rata basis with respect to
9 the amounts requested. The pro rata allocation for any one qualified
10 investor or qualified fund shall be the product obtained by multiplying a
11 fraction, the numerator of which is the amount of the tax credit
12 allocation request filed on behalf of a qualified investor or qualified
13 fund and the denominator of which is the total of all tax credit
14 allocation requests filed on behalf of all applicants on that day, by the
15 amount of tax credits that remain unallocated on that day for the taxable
16 year.

17 (6) A qualified investor or qualified fund, or a qualified small
18 business acting on behalf of the investor or fund, shall notify the
19 director when an investment for which tax credits were allocated has been
20 made and shall furnish the director with documentation of the investment
21 date. A qualified fund shall also provide the director with a statement
22 indicating the amount invested by each investor in the qualified fund
23 based on each investor's share of the assets of the qualified fund at the
24 time of the qualified investment. After receiving notification that the
25 qualified investment was made, the director shall issue tax credit
26 certificates for the taxable year in which the qualified investment was
27 made to the qualified investor or, for a qualified investment made by a
28 qualified fund, to each qualified investor who is an investor in the
29 fund. The certificate shall state that the tax credit is subject to
30 revocation if the qualified investor or qualified fund does not hold the
31 investment in the qualified small business for at least three years,

1 consisting of the calendar year in which the investment was made and the
2 two following calendar years. The three-year holding period does not
3 apply if:

4 (a) The qualified investment by the qualified investor or qualified
5 fund becomes worthless before the end of the three-year period;

6 (b) Eighty percent or more of the assets of the qualified small
7 business are sold before the end of the three-year period;

8 (c) The qualified small business is sold or merges with another
9 business before the end of the three-year period;

10 (d) The qualified small business's common stock begins trading on a
11 public exchange before the end of the three-year period; or

12 (e) In the case of an individual qualified investor, such investor
13 becomes deceased before the end of the three-year period.

14 (7) The director shall notify the Tax Commissioner that tax credit
15 certificates have been issued, including the amount of tax credits and
16 all other pertinent tax information.

17 Sec. 10. Original section 13-204, Reissue Revised Statutes of
18 Nebraska, sections 77-1116, 77-27,187.02, 77-2912, 77-5208, and 77-5806,
19 Revised Statutes Cumulative Supplement, 2016, and sections 77-5725,
20 77-5905, and 77-6306, Revised Statutes Supplement, 2017, are repealed.