Introduce by Friesen, 34.

Read first time January 16, 2020

Committee: Revenue

A BILL FOR AN ACT relating to the Nebraska Advantage Act; to amend section 77-5735, Reissue Revised Statutes of Nebraska, and section 77-5725, Revised Statutes Supplement, 2019; to extend application deadlines; to change provisions relating to certain tax credits; to provide for the applicability of changes; and to repeal the original sections.

Be it enacted by the people of the State of Nebraska,
Section 1. Section 77-5725, Revised Statutes Supplement, 2019, is amended to read:

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

(a) Tier 1, investment in qualified property of at least one million dollars and the hiring of at least ten new employees. There shall be no new project applications for benefits under this tier filed after December 31, 2021. All complete project applications filed on or before December 31, 2021, shall be considered by the Tax Commissioner and approved if the project and taxpayer qualify for benefits. Agreements may be executed with regard to completed project applications filed on or before December 31, 2021. All project agreements pending, approved, or entered into before such date shall continue in full force and effect;

(b) Tier 2, (i) investment in qualified property of at least three million dollars and the hiring of at least thirty new employees or (ii) for a large data center project, investment in qualified property for the data center of at least two hundred million dollars and the hiring for the data center of at least thirty new employees. There shall be no new project applications for benefits under this tier filed after December 31, 2021. All complete project applications filed on or before December 31, 2021, shall be considered by the Tax Commissioner and approved if the project and taxpayer qualify for benefits. Agreements may be executed with regard to completed project applications filed on or before December 31, 2021. All project agreements pending, approved, or entered into before such date shall continue in full force and effect;

(c) Tier 3, the hiring of at least thirty new employees. There shall be no new project applications for benefits under this tier filed after December 31, 2021. All complete project applications filed on or before December 31, 2021, shall be considered by the Tax Commissioner and approved if the project and taxpayer qualify for
benefits. Agreements may be executed with regard to completed project applications filed on or before December 31, 2021. All project agreements pending, approved, or entered into before such date shall continue in full force and effect;

(d) Tier 4, investment in qualified property of at least ten million dollars and the hiring of at least one hundred new employees. There shall be no new project applications for benefits under this tier filed after December 31, 2021. All complete project applications filed on or before December 31, 2021, shall be considered by the Tax Commissioner and approved if the project and taxpayer qualify for benefits. Agreements may be executed with regard to completed project applications filed on or before December 31, 2021. All project agreements pending, approved, or entered into before such date shall continue in full force and effect;

(e) Tier 5, (i) investment in qualified property of at least thirty million dollars or (ii) for the production of electricity by using one or more sources of renewable energy to produce electricity for sale as described in subdivision (1)(j) of section 77-5715, investment in qualified property of at least twenty million dollars. Failure to maintain an average number of equivalent employees as defined in section 77-5727 greater than or equal to the number of equivalent employees in the base year shall result in a partial recapture of benefits. There shall be no new project applications for benefits under this tier filed after December 31, 2021. All complete project applications filed on or before December 31, 2021, shall be considered by the Tax Commissioner and approved if the project and taxpayer qualify for benefits. Agreements may be executed with regard to completed project applications filed on or before December 31, 2021. All project agreements pending, approved, or entered into before such date shall continue in full force and effect; and

(f) Tier 6, investment in qualified property of at least ten million
dollars and the hiring of at least seventy-five new employees or the investment in qualified property of at least one hundred million dollars and the hiring of at least fifty new employees. There shall be no new project applications for benefits under this tier filed after December 31, 2021. All complete project applications filed on or before December 31, 2020, shall be considered by the Tax Commissioner and approved if the project and taxpayer qualify for benefits. Agreements may be executed with regard to completed project applications filed on or before December 31, 2021. All project agreements pending, approved, or entered into before such date shall continue in full force and effect.

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

(a) A refund of all sales and use taxes for a tier 2, tier 4, tier 5, or tier 6 project or a refund of one-half of all sales and use taxes for a tier 1 project paid under the Local Option Revenue Act, the Nebraska Revenue Act of 1967, and sections 13-319, 13-324, 13-2813, and 77-6403 from the date of the application through the meeting of the required levels of employment and investment for all purchases, including rentals, of:

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

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

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

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

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

(b) A refund of all sales and use taxes for a tier 2, tier 4, tier 5, or tier 6 project or a refund of one-half of all sales and use taxes for a tier 1 project paid under the Local Option Revenue Act, the Nebraska Revenue Act of 1967, and sections 13-319, 13-324, 13-2813, and 77-6403 on the types of purchases, including rentals, listed in subdivision (a) of this subsection for such taxes paid during each year of the entitlement period in which the taxpayer is at or above the required levels of employment and investment.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(d) In order to receive the property tax exemptions allowed by subdivision (8)(c) of this section, the taxpayer shall annually file a claim for exemption with the Tax Commissioner on or before May 1. The form and supporting schedules shall be prescribed by the Tax Commissioner and shall list all property for which exemption is being sought under this section. A separate claim for exemption must be filed for each project and each county in which property is claimed to be exempt. A copy
of this form must also be filed with the county assessor in each county in which the applicant is requesting exemption. The Tax Commissioner shall determine whether a taxpayer is eligible to obtain exemption for personal property based on the criteria for exemption and the eligibility of each item listed for exemption and, on or before August 1, certify such to the taxpayer and to the affected county assessor.

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

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

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

(d) For a tier 2 large data center project, beginning October 1, 2012, and each October 1 thereafter, the average Producer Price Index for all commodities, published by the United States Department of Labor, Bureau of Labor Statistics, for the most recent twelve available periods
shall be divided by the Producer Price Index for the first quarter of 2012 and the result multiplied by the applicable investment threshold.

The investment thresholds shall be adjusted for cumulative inflation since 2012.

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

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

Sec. 2. Section 77-5735, Reissue Revised Statutes of Nebraska, is amended to read:

77-5735 (1) The changes made in sections 77-5703, 77-5708, 77-5712, 77-5714, 77-5715, 77-5723, 77-5725, 77-5726, 77-5727, and 77-5731 by Laws 2008, LB895, and sections 77-5707.01, 77-5719.01, and 77-5719.02 apply to all applications filed on and after April 18, 2008. For all applications filed prior to such date, the provisions of the Nebraska Advantage Act as they existed immediately prior to such date apply.

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

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

(4) The changes made in sections 77-5701, 77-5703, 77-5705, 77-5715, 77-5723, 77-5725, 77-5726, and 77-5727 by Laws 2012, LB1118, apply to all applications filed on or after March 8, 2012. For all applications filed prior to such date, the provisions of the Nebraska Advantage Act as they existed immediately prior to such date apply.

(5) The changes made in sections 77-5707.01, 77-5709, 77-5712, 77-5719, 77-5720, 77-5723, and 77-5726 by Laws 2013, LB34, apply to all applications filed on or after September 6, 2013. For all applications filed prior to such date, the provisions of the Nebraska Advantage Act as they existed immediately prior to such date apply.

(6) The changes made in section 77-5726 by Laws 2017, LB161, apply to all applications filed before, on, or after August 24, 2017.

(7) The changes made in subsection (3) of section 77-5725 by this legislative bill apply to all applications filed on or after the effective date of this act. For all applications filed prior to such date, the provisions of the Nebraska Advantage Act as they existed immediately prior to such date apply.

Sec. 3. Original section 77-5735, Reissue Revised Statutes of Nebraska, and section 77-5725, Revised Statutes Supplement, 2019, are repealed.