

E AND R AMENDMENTS TO LB 1150

Introduced by McKinney, 11, Chairman Enrollment and Review

1           1. Strike the original sections and all amendments thereto and  
2 insert the following new sections:

3           Section 1. Section 77-376, Reissue Revised Statutes of Nebraska, is  
4 amended to read:

5           77-376 (1) The Tax Commissioner may examine or cause to be examined  
6 in his or her behalf, and make memoranda from, any of the financial  
7 records of state and local subdivisions, persons, and corporations  
8 subject to the tax laws of this state, including the social security  
9 numbers of employees of such state and local subdivisions, persons, and  
10 corporations. No information shall be released that is not so authorized  
11 by existing statutes. Unless otherwise prohibited by law, the Tax  
12 Commissioner may share the information examined with the taxing or law  
13 enforcement authorities of this state, other states, and the federal  
14 government.

15           (2) The audit and examination selection criteria and standards, the  
16 discovery techniques, the design of technological systems to detect fraud  
17 and inconsistencies, and all other techniques utilized by the Department  
18 of Revenue to discover fraud, misstatements, inconsistencies,  
19 underreporting, and tax avoidance shall be confidential information. The  
20 department may disclose this information to certain persons to further  
21 its enforcement activities and as provided under section 50-1213, but  
22 such limited disclosure shall not change the confidential nature of the  
23 information.

24           Sec. 2. Section 77-2708, Revised Statutes Cumulative Supplement,  
25 2020, is amended to read:

26           77-2708 (1)(a) The sales and use taxes imposed by the Nebraska  
27 Revenue Act of 1967 shall be due and payable to the Tax Commissioner

1 monthly on or before the twentieth day of the month next succeeding each  
2 monthly period unless otherwise provided pursuant to the Nebraska Revenue  
3 Act of 1967.

4 (b)(i) On or before the twentieth day of the month following each  
5 monthly period or such other period as the Tax Commissioner may require,  
6 a return for such period, along with all taxes due, shall be filed with  
7 the Tax Commissioner in such form and content as the Tax Commissioner may  
8 prescribe and containing such information as the Tax Commissioner deems  
9 necessary for the proper administration of the Nebraska Revenue Act of  
10 1967. The Tax Commissioner, if he or she deems it necessary in order to  
11 insure payment to or facilitate the collection by the state of the amount  
12 of sales or use taxes due, may require returns and payment of the amount  
13 of such taxes for periods other than monthly periods in the case of a  
14 particular seller, retailer, or purchaser, as the case may be. The Tax  
15 Commissioner shall by rule and regulation require reports and tax  
16 payments from sellers, retailers, or purchasers depending on their yearly  
17 tax liability. Except as required by the streamlined sales and use tax  
18 agreement, annual returns shall be required if such sellers', retailers',  
19 or purchasers' yearly tax liability is less than nine hundred dollars,  
20 quarterly returns shall be required if their yearly tax liability is nine  
21 hundred dollars or more and less than three thousand dollars, and monthly  
22 returns shall be required if their yearly tax liability is three thousand  
23 dollars or more. The Tax Commissioner shall have the discretion to allow  
24 an annual return for seasonal retailers, even when their yearly tax  
25 liability exceeds the amounts listed in this subdivision.

26 The Tax Commissioner may adopt and promulgate rules and regulations  
27 to allow annual, semiannual, or quarterly returns for any retailer making  
28 monthly remittances or payments of sales and use taxes by electronic  
29 funds transfer or for any retailer remitting tax to the state pursuant to  
30 the streamlined sales and use tax agreement. Such rules and regulations  
31 may establish a method of determining the amount of the payment that will

1 result in substantially all of the tax liability being paid each quarter.  
2 At least once each year, the difference between the amount paid and the  
3 amount due shall be reconciled. If the difference is more than ten  
4 percent of the amount paid, a penalty of fifty percent of the unpaid  
5 amount shall be imposed.

6 (ii) For purposes of the sales tax, a return shall be filed by every  
7 retailer liable for collection from a purchaser and payment to the state  
8 of the tax, except that a combined sales tax return may be filed for all  
9 licensed locations which are subject to common ownership. For purposes of  
10 this subdivision, common ownership means the same person or persons own  
11 eighty percent or more of each licensed location. For purposes of the use  
12 tax, a return shall be filed by every retailer engaged in business in  
13 this state and by every person who has purchased property, the storage,  
14 use, or other consumption of which is subject to the use tax, but who has  
15 not paid the use tax due to a retailer required to collect the tax.

16 (iii) The Tax Commissioner may require that returns be signed by the  
17 person required to file the return or by his or her duly authorized agent  
18 but need not be verified by oath.

19 (iv) A taxpayer who keeps his or her regular books and records on a  
20 cash basis, an accrual basis, or any generally recognized accounting  
21 basis which correctly reflects the operation of the business may file the  
22 sales and use tax returns required by the Nebraska Revenue Act of 1967 on  
23 the same accounting basis that is used for the regular books and records,  
24 except that on credit, conditional, and installment sales, the retailer  
25 who keeps his or her books on an accrual basis may report such sales on  
26 the cash basis and pay the tax upon the collections made during each  
27 month. If a taxpayer transfers, sells, assigns, or otherwise disposes of  
28 an account receivable, he or she shall be deemed to have received the  
29 full balance of the consideration for the original sale and shall be  
30 liable for the remittance of the sales tax on the balance of the total  
31 sale price not previously reported, except that such transfer, sale,

1 assignment, or other disposition of an account receivable by a retailer  
2 to a subsidiary shall not be deemed to require the retailer to pay the  
3 sales tax on the credit sale represented by the account transferred prior  
4 to the time the customer makes payment on such account. If the subsidiary  
5 does not obtain a Nebraska sales tax permit, the taxpayer shall obtain a  
6 surety bond in favor of the State of Nebraska to insure payment of the  
7 tax and any interest and penalty imposed thereon under this section in an  
8 amount not less than two times the amount of tax payable on outstanding  
9 accounts receivable held by the subsidiary as of the end of the prior  
10 calendar year. Failure to obtain either a sales tax permit or a surety  
11 bond in accordance with this section shall result in the payment on the  
12 next required filing date of all sales taxes not previously remitted.  
13 When the retailer has adopted one basis or the other of reporting credit,  
14 conditional, or installment sales and paying the tax thereon, he or she  
15 will not be permitted to change from that basis without first having  
16 notified the Tax Commissioner.

17 (c) Except as provided in the streamlined sales and use tax  
18 agreement, the taxpayer required to file the return shall deliver or mail  
19 any required return together with a remittance of the net amount of the  
20 tax due to the office of the Tax Commissioner on or before the required  
21 filing date. Failure to file the return, filing after the required filing  
22 date, failure to remit the net amount of the tax due, or remitting the  
23 net amount of the tax due after the required filing date shall be cause  
24 for a penalty, in addition to interest, of ten percent of the amount of  
25 tax not paid by the required filing date or twenty-five dollars,  
26 whichever is greater, unless the penalty is being collected under  
27 subdivision (1)(i), (1)(j)(i), or (1)(k)(i) of section 77-2703 by a  
28 county treasurer or the Department of Motor Vehicles, in which case the  
29 penalty shall be five dollars.

30 (d) The taxpayer shall deduct and withhold, from the taxes otherwise  
31 due from him or her on his or her tax return, two and one-half percent of

1 the first three thousand dollars remitted each month to reimburse himself  
2 or herself for the cost of collecting the tax. Taxpayers filing a  
3 combined return as allowed by subdivision (1)(b)(ii) of this subsection  
4 shall compute such collection fees on the basis of the receipts and  
5 liability of each licensed location.

6 (e) A retailer that makes sales into Nebraska using a multivendor  
7 marketplace platform is relieved of its obligation to collect and remit  
8 sales taxes to Nebraska with regard to any sales taxes collected and  
9 remitted by the multivendor marketplace platform. Such a retailer must  
10 include all sales into Nebraska in its gross receipts in its return, but  
11 may claim credit for any sales taxes collected and remitted by the  
12 multivendor marketplace platform with respect to such retailer's sales.  
13 Such retailer is liable for the sales tax due on sales into Nebraska as  
14 provided in section 77-2704.35.

15 (f) A multivendor marketplace platform is relieved of its obligation  
16 to collect and remit the correct amount of state and local sales taxes to  
17 Nebraska to the extent that the multivendor marketplace platform can  
18 establish that the error was due to insufficient or incorrect information  
19 given to the multivendor marketplace platform by the seller and relied on  
20 by the multivendor marketplace platform. This subdivision shall not apply  
21 if the multivendor marketplace platform and the seller are related  
22 persons under either section 267(b) or (c) or section 707(b) of the  
23 Internal Revenue Code of 1986 or if the seller is also the multivendor  
24 marketplace platform operator.

25 (2)(a) If the Tax Commissioner determines that any sales or use tax  
26 amount, penalty, or interest has been paid more than once, has been  
27 erroneously or illegally collected or computed, or has been paid and the  
28 purchaser qualifies for a refund under section 77-2708.01, the Tax  
29 Commissioner shall set forth that fact in his or her records and the  
30 excess amount collected or paid may be credited on any sales, use, or  
31 income tax amounts then due and payable from the person under the

1 Nebraska Revenue Act of 1967. Any balance may be refunded to the person  
2 by whom it was paid or his or her successors, administrators, or  
3 executors.

4 (b) No refund shall be allowed unless a claim therefor is filed with  
5 the Tax Commissioner by the person who made the overpayment or his or her  
6 attorney, executor, or administrator within three years from the required  
7 filing date following the close of the period for which the overpayment  
8 was made, within six months after any determination becomes final under  
9 section 77-2709, or within six months from the date of overpayment with  
10 respect to such determinations, whichever of these three periods expires  
11 later, unless the credit relates to a period for which a waiver has been  
12 given. Failure to file a claim within the time prescribed in this  
13 subsection shall constitute a waiver of any demand against the state on  
14 account of overpayment.

15 (c) Every claim shall be in writing on forms prescribed by the Tax  
16 Commissioner and shall state the specific amount and grounds upon which  
17 the claim is founded. No refund shall be made in any amount less than two  
18 dollars.

19 (d) The Tax Commissioner shall allow or disallow a claim within one  
20 hundred eighty days after it has been filed. A request for a hearing  
21 shall constitute a waiver of the one-hundred-eighty-day period. The  
22 claimant and the Tax Commissioner may also agree to extend the one-  
23 hundred-eighty-day period. If a hearing has not been requested and the  
24 Tax Commissioner has neither allowed nor disallowed a claim within either  
25 the one hundred eighty days or the period agreed to by the claimant and  
26 the Tax Commissioner, the claim shall be deemed to have been allowed.

27 (e) Within thirty days after disallowing any claim in whole or in  
28 part, the Tax Commissioner shall serve notice of his or her action on the  
29 claimant in the manner prescribed for service of notice of a deficiency  
30 determination.

31 (f) Within thirty days after the mailing of the notice of the Tax

1 Commissioner's action upon a claim filed pursuant to the Nebraska Revenue  
2 Act of 1967, the action of the Tax Commissioner shall be final unless the  
3 taxpayer seeks review of the Tax Commissioner's determination as provided  
4 in section 77-27,127.

5 (g) Upon the allowance of a credit or refund of any sum erroneously  
6 or illegally assessed or collected, of any penalty collected without  
7 authority, or of any sum which was excessive or in any manner wrongfully  
8 collected, interest shall be allowed and paid on the amount of such  
9 credit or refund at the rate specified in section 45-104.02, as such rate  
10 may from time to time be adjusted, from the date such sum was paid or  
11 from the date the return was required to be filed, whichever date is  
12 later, to the date of the allowance of the refund or, in the case of a  
13 credit, to the due date of the amount against which the credit is  
14 allowed, but in the case of a voluntary and unrequested payment in excess  
15 of actual tax liability or a refund under section 77-2708.01, no interest  
16 shall be allowed when such excess is refunded or credited.

17 (h) No suit or proceeding shall be maintained in any court for the  
18 recovery of any amount alleged to have been erroneously or illegally  
19 determined or collected unless a claim for refund or credit has been duly  
20 filed.

21 (i) The Tax Commissioner may recover any refund or part thereof  
22 which is erroneously made and any credit or part thereof which is  
23 erroneously allowed by issuing a deficiency determination within one year  
24 from the date of refund or credit or within the period otherwise allowed  
25 for issuing a deficiency determination, whichever expires later.

26 (j)(i) Credit shall be allowed to the retailer, contractor, or  
27 repairperson for sales or use taxes paid pursuant to the Nebraska Revenue  
28 Act of 1967 on any deduction taken that is attributed to bad debts not  
29 including interest. Bad debt has the same meaning as in 26 U.S.C. 166, as  
30 such section existed on January 1, 2003. However, the amount calculated  
31 pursuant to 26 U.S.C. 166 shall be adjusted to exclude: Financing charges

1 or interest; sales or use taxes charged on the purchase price;  
2 uncollectible amounts on property that remains in the possession of the  
3 seller until the full purchase price is paid; and expenses incurred in  
4 attempting to collect any debt and repossessed property.

5 (ii) Bad debts may be deducted on the return for the period during  
6 which the bad debt is written off as uncollectible in the claimant's  
7 books and records and is eligible to be deducted for federal income tax  
8 purposes. A claimant who is not required to file federal income tax  
9 returns may deduct a bad debt on a return filed for the period in which  
10 the bad debt is written off as uncollectible in the claimant's books and  
11 records and would be eligible for a bad debt deduction for federal income  
12 tax purposes if the claimant was required to file a federal income tax  
13 return.

14 (iii) If a deduction is taken for a bad debt and the debt is  
15 subsequently collected in whole or in part, the tax on the amount so  
16 collected must be paid and reported on the return filed for the period in  
17 which the collection is made.

18 (iv) When the amount of bad debt exceeds the amount of taxable sales  
19 for the period during which the bad debt is written off, a refund claim  
20 may be filed within the otherwise applicable statute of limitations for  
21 refund claims. The statute of limitations shall be measured from the due  
22 date of the return on which the bad debt could first be claimed.

23 (v) If filing responsibilities have been assumed by a certified  
24 service provider, the service provider may claim, on behalf of the  
25 retailer, any bad debt allowance provided by this section. The certified  
26 service provider shall credit or refund the full amount of any bad debt  
27 allowance or refund received to the retailer.

28 (vi) For purposes of reporting a payment received on a previously  
29 claimed bad debt, any payments made on a debt or account are applied  
30 first proportionally to the taxable price of the property or service and  
31 the sales tax thereon, and secondly to interest, service charges, and any



1 other charges.

2 (vii) In situations in which the books and records of the party  
3 claiming the bad debt allowance support an allocation of the bad debts  
4 among the member states in the streamlined sales and use tax agreement,  
5 the state shall permit the allocation.

6 (3) Beginning July 1, 2020, if a refund claim under this section  
7 involves a refund of a tax imposed under the Local Option Revenue Act or  
8 section 13-319, 13-2813, or 77-6403 and the amount of such tax to be  
9 refunded is at least five thousand dollars, the Tax Commissioner shall  
10 notify the affected city, village, county, or municipal county of such  
11 claim within twenty days after receiving the claim. If the Tax  
12 Commissioner allows the claim and the refund of such tax is at least five  
13 thousand dollars, the Tax Commissioner shall notify the affected city,  
14 village, county, or municipal county of such refund and shall give the  
15 city, village, county, or municipal county the option of having such  
16 refund deducted from its tax proceeds in one lump sum or in twelve equal  
17 monthly installments. The city, village, county, or municipal county  
18 shall make its selection and shall certify the selection to the Tax  
19 Commissioner within twenty days after receiving notice of the refund. The  
20 Tax Commissioner shall then deduct such refund from the applicable tax  
21 proceeds in accordance with the selection when he or she deducts refunds  
22 pursuant to section 13-324, 13-2814, ~~77-27,144,~~ or 77-6403 or subsection  
23 (1) of section 77-27,144, whichever is applicable. This subsection shall  
24 not apply to any refund that is subject to subdivision (2)(a) or (2)(b)  
25 (ii) or subsection (3) or (4) of section 77-27,144.

26 Sec. 3. Section 77-27,144, Revised Statutes Supplement, 2021, is  
27 amended to read:

28 77-27,144 (1) The Tax Commissioner shall collect the tax imposed by  
29 any incorporated municipality concurrently with collection of a state tax  
30 in the same manner as the state tax is collected. The Tax Commissioner  
31 shall remit monthly the proceeds of the tax to the incorporated

1 municipalities levying the tax, after deducting the amount of refunds  
2 made and three percent of the remainder to be credited to the Municipal  
3 Equalization Fund.

4 (2)(a) (2) Deductions for a refund made pursuant to section 77-4105,  
5 77-4106, 77-5725, or 77-5726 and owed by a city of the first class, city  
6 of the second class, or village shall be delayed for one year after the  
7 refund has been made to the taxpayer. The Department of Revenue shall  
8 notify the municipality liable for a refund exceeding one thousand five  
9 hundred dollars of the pending refund, the amount of the refund, and the  
10 month in which the deduction will be made or begin, except that if the  
11 amount of a refund claimed under section 77-4105, 77-4106, 77-5725, or  
12 77-5726 exceeds twenty-five percent of the municipality's total sales and  
13 use tax receipts, net of any refunds or sales tax collection fees, for  
14 the municipality's prior fiscal year, the department shall deduct the  
15 refund over the period of one year in equal monthly amounts beginning  
16 after the one-year notification period required by this subdivision  
17 subsection. This subsection applies to refunds owed by cities of the  
18 first class, cities of the second class, and villages. This subsection  
19 applies to refunds beginning January 1, 2014.

20 (b) Deductions for a refund made pursuant to section 77-4105,  
21 77-4106, 77-5725, or 77-5726 and owed by a city of the metropolitan class  
22 or city of the primary class shall be made as follows:

23 (i) During calendar year 2023, such deductions shall be made in  
24 accordance with subsection (1) of this section; and

25 (ii) During calendar year 2024 and each calendar year thereafter,  
26 such deductions shall be made based on estimated amounts as described in  
27 this subdivision. On or before March 1, 2023, and on or before March 1 of  
28 each year thereafter, the Department of Revenue shall notify each city of  
29 the metropolitan class and city of the primary class of the total amount  
30 of such refunds that are estimated to be paid during the following  
31 calendar year. Such estimated amount shall be used to establish the total

1 amount to be deducted in the following calendar year. The department  
2 shall deduct such amount over the following calendar year in twelve equal  
3 monthly amounts. Beginning with the notification sent in calendar year  
4 2025, the notification shall include any adjustment needed for the prior  
5 calendar year to account for any difference between the estimated amount  
6 deducted in such prior calendar year and the actual amount of refunds  
7 paid in such year.

8 (3) Deductions for a refund made pursuant to the Imagine Nebraska  
9 Act shall be delayed as provided in this subsection after the refund has  
10 been made to the taxpayer. The Department of Revenue shall notify each  
11 municipality liable for a refund exceeding one thousand five hundred  
12 dollars of the pending refund and the amount of the refund claimed under  
13 the Imagine Nebraska Act. The notification shall be made by March 1 of  
14 each year beginning in 2021 and shall be used to establish the refund  
15 amount for the following calendar year. The notification shall include  
16 any excess or underpayment from the prior calendar year. The department  
17 shall deduct the refund over a period of one year in equal monthly  
18 amounts beginning in January following the notification. This subsection  
19 applies to total annual refunds exceeding one million dollars or twenty-  
20 five percent of the municipality's total sales and use tax receipts for  
21 the prior fiscal year, whichever is the lesser amount.

22 (4) Deductions for a refund made pursuant to the Urban Redevelopment  
23 Act shall be delayed as provided in this subsection after the refund has  
24 been made to the taxpayer. The Department of Revenue shall notify each  
25 municipality liable for a refund exceeding one thousand five hundred  
26 dollars of the pending refund and the amount of the refund claimed under  
27 the Urban Redevelopment Act. The notification shall be made by March 1 of  
28 each year beginning in 2022 and shall be used to establish the refund  
29 amount for the following calendar year. The notification shall include  
30 any excess or underpayment from the prior calendar year. The department  
31 shall deduct the refund over a period of one year in equal monthly

1 amounts beginning in January following the notification. This subsection  
2 applies to total annual refunds exceeding one million dollars or twenty-  
3 five percent of the municipality's total sales and use tax receipts for  
4 the prior fiscal year, whichever is the lesser amount.

5 (5) The Tax Commissioner shall keep full and accurate records of all  
6 money received and distributed under the provisions of the Local Option  
7 Revenue Act. When proceeds of a tax levy are received but the identity of  
8 the incorporated municipality which levied the tax is unknown and is not  
9 identified within six months after receipt, the amount shall be credited  
10 to the Municipal Equalization Fund. The municipality may request the  
11 names and addresses of the retailers which have collected the tax as  
12 provided in subsection (13) of section 77-2711 and may certify an  
13 individual to request and review confidential sales and use tax returns  
14 and sales and use tax return information as provided in subsection (14)  
15 of section 77-2711.

16 (6)(a) Every qualifying business that has filed an application to  
17 receive tax incentives under the Employment and Investment Growth Act,  
18 the Nebraska Advantage Act, the Imagine Nebraska Act, or the Urban  
19 Redevelopment Act shall, with respect to such acts, provide annually to  
20 each municipality, in aggregate data, the maximum amount the qualifying  
21 business is eligible to receive in the current year in refunds of local  
22 sales and use taxes of the municipality and exemptions for the previous  
23 year, and the estimate of annual refunds of local sales and use taxes of  
24 the municipality and exemptions such business intends to claim in each  
25 future year. Such information shall be kept confidential by the  
26 municipality unless publicly disclosed previously by the taxpayer or by  
27 the State of Nebraska.

28 (b) For purposes of this subsection, municipality means a  
29 municipality that has adopted the local option sales and use tax under  
30 the Local Option Revenue Act and to which the qualifying business has  
31 paid such sales and use tax.

1 (c) The qualifying business shall provide the information to the  
2 municipality on or before June 30 of each year.

3 (d) Any amounts held by a municipality to make sales and use tax  
4 refunds under the Employment and Investment Growth Act, the Nebraska  
5 Advantage Act, the Imagine Nebraska Act, and the Urban Redevelopment Act  
6 shall not count toward any budgeted restricted funds limitation as  
7 provided in section 13-519 or toward any cash reserve limitation as  
8 provided in section 13-504.

9 Sec. 4. Section 77-27,195, Reissue Revised Statutes of Nebraska, is  
10 amended to read:

11 77-27,195 (1) The Tax Commissioner shall prepare a report  
12 identifying the amount of investment in this state and the number of  
13 equivalent jobs created by each taxpayer claiming a credit pursuant to  
14 the Nebraska Advantage Rural Development Act. The report shall include  
15 the amount of credits claimed in the aggregate. The report shall be  
16 issued on or before October 31 ~~July 15~~ of each year for all credits  
17 allowed during the previous fiscal calendar year. The report shall be on  
18 a fiscal year, accrual basis that satisfies the requirements set by the  
19 Governmental Accounting Standards Board. The Department of Revenue shall,  
20 on or before December 15 ~~September 1~~ of each even-numbered year, appear  
21 at a joint hearing of the Appropriations Committee of the Legislature and  
22 the Revenue Committee of the Legislature and present the report. Any  
23 supplemental information requested by three or more committee members  
24 shall be presented within thirty days after the request.

25 (2) Beginning with applications filed on or after January 1, 2006,  
26 except for livestock modernization or expansion projects, the report  
27 shall provide information on project-specific total incentives used every  
28 two years for each approved project and shall disclose (a) the identity  
29 of the taxpayer, (b) the location of the project, and (c) the total  
30 credits used and refunds approved during the immediately preceding two  
31 years expressed as a single, aggregated total. The incentive information

1 required to be reported under this subsection shall not be reported for  
2 the first year the taxpayer attains the required employment and  
3 investment thresholds. The information on first-year incentives used  
4 shall be combined with and reported as part of the second year.  
5 Thereafter, the information on incentives used for succeeding years shall  
6 be reported for each project every two years containing information on  
7 two years of credits used and refunds approved. The incentives used shall  
8 include incentives which have been approved by the Department of Revenue,  
9 but not necessarily received, during the previous two fiscal calendar  
10 years.

11 (3) For livestock modernization or expansion projects, the report  
12 shall disclose (a) the identity of the taxpayer, (b) the total credits  
13 used and refunds approved during the preceding fiscal calendar year, and  
14 (c) the location of the project.

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

17 Sec. 5. Section 77-4110, Reissue Revised Statutes of Nebraska, is  
18 amended to read:

19 77-4110 (1) The Tax Commissioner shall submit electronically an  
20 annual report to the Legislature no later than October 31 ~~July 15~~ of each  
21 year. The report shall be on a fiscal year, accrual basis that satisfies  
22 the requirements set by the Governmental Accounting Standards Board. The  
23 Department of Revenue shall, on or before December 15 ~~September 1~~ of each  
24 even-numbered year, appear at a joint hearing of the Appropriations  
25 Committee of the Legislature and the Revenue Committee of the Legislature  
26 and present the report. Any supplemental information requested by three  
27 or more committee members shall be presented within thirty days after the  
28 request.

29 (2) The report shall list (a) the agreements which have been signed  
30 during the previous fiscal calendar year, (b) the agreements which are  
31 still in effect, (c) the identity of each taxpayer, and (d) the location

1 of each project.

2 (3) The report shall also state by industry group (a) the specific  
3 incentive options applied for under the Employment and Investment Growth  
4 Act, (b) the refunds allowed on the investment, (c) the credits earned,  
5 (d) the credits used to reduce the corporate income tax and the credits  
6 used to reduce the individual income tax, (e) the credits used to obtain  
7 sales and use tax refunds, (f) the number of jobs created, (g) the total  
8 number of employees employed in the state by the taxpayer on the last day  
9 of the calendar quarter prior to the application date and the total  
10 number of employees employed in the state by the taxpayer on subsequent  
11 reporting dates, (h) the expansion of capital investment, (i) the  
12 estimated wage levels of jobs created subsequent to the application date,  
13 (j) the total number of qualified applicants, (k) the projected future  
14 state revenue gains and losses, (l) the sales tax refunds owed to the  
15 applicants, (m) the credits outstanding, and (n) the value of personal  
16 property exempted by class in each county.

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

19 Sec. 6. Section 77-4933, Reissue Revised Statutes of Nebraska, is  
20 amended to read:

21 77-4933 (1) The Department of Revenue shall submit electronically an  
22 annual report to the Legislature no later than October 31 of July 15 each  
23 year. The report shall be on a fiscal year, accrual basis that satisfies  
24 the requirements set by the Governmental Accounting Standards Board. The  
25 report shall list (a) the agreements which have been signed during the  
26 previous fiscal calendar year, (b) the agreements which are still in  
27 effect, (c) the identity of each company, and (d) the location of each  
28 project. The department shall, on or before December 15 September 1 of  
29 each even-numbered year, appear at a joint hearing of the Appropriations  
30 Committee of the Legislature and the Revenue Committee of the Legislature  
31 and present the report. Any supplemental information requested by three

1 or more committee members shall be presented within thirty days after the  
2 request.

3 (2) The report shall also state by industry group (a) the amount of  
4 wage benefit credits allowed under the Quality Jobs Act, (b) the number  
5 of direct jobs created at the project, (c) the amount of direct capital  
6 investment under the act, (d) the estimated wage levels of jobs created  
7 by the companies at the projects, (e) the estimated indirect jobs and  
8 investment created on account of the projects, and (f) the projected  
9 future state and local revenue gains and losses from all revenue sources  
10 on account of the direct and indirect jobs and investment created on  
11 account of the project.

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

14 Sec. 7. Section 77-5705, Reissue Revised Statutes of Nebraska, is  
15 amended to read:

16 77-5705 Except for a tier 5 project that is sequential to a tier 2  
17 large data center project, base year means the year immediately preceding  
18 the year of application. For a tier 5 project that is sequential to a  
19 tier 2 large data center project, the base year means the last year of  
20 the tier 2 large data center project entitlement period relating to  
21 ~~direct sales tax~~ exemptions ~~refunds~~.

22 Sec. 8. Section 77-5723, Reissue Revised Statutes of Nebraska, is  
23 amended to read:

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

28 (2) The application shall contain:

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

31 (b) Sufficient documents, plans, and specifications as required by



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

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

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

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

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

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

28 (4) Once satisfied that the plan in the application defines a  
29 project consistent with the purposes stated in the Nebraska Advantage Act  
30 in one or more qualified business activities within this state, that the  
31 taxpayer and the plan will qualify for benefits under the act, and that

1 the required levels of employment and investment for the project will be  
2 met prior to the end of the fourth year after the year in which the  
3 application was submitted for a tier 1, tier 3, or tier 6 project or the  
4 end of the sixth year after the year in which the application was  
5 submitted for a tier 2, tier 4, or tier 5 project, the Tax Commissioner  
6 shall approve the application. For a tier 5 project that is sequential to  
7 a tier 2 large data center project, the required level of investment  
8 shall be met prior to the end of the fourth year after the expiration of  
9 the tier 2 large data center project entitlement period relating to  
10 ~~direct sales tax~~ exemptions ~~refunds~~.

11 (5) The Tax Commissioner shall make his or her determination to  
12 approve or not approve an application within one hundred eighty days  
13 after the date of the application. If the Tax Commissioner requests, by  
14 mail or by electronic means, additional information or clarification from  
15 the taxpayer in order to make his or her determination, such one-hundred-  
16 eighty-day period shall be tolled from the time the Tax Commissioner  
17 makes the request to the time he or she receives the requested  
18 information or clarification from the taxpayer. The taxpayer and the Tax  
19 Commissioner may also agree to extend the one-hundred-eighty-day period.  
20 If the Tax Commissioner fails to make his or her determination within the  
21 prescribed one-hundred-eighty-day period, the application shall be deemed  
22 approved.

23 (6) Within one hundred eighty days after approval of the  
24 application, the Tax Commissioner shall prepare and mail a written  
25 agreement to the taxpayer for the taxpayer's signature. The taxpayer and  
26 the Tax Commissioner shall enter into a written agreement. The taxpayer  
27 shall agree to complete the project, and the Tax Commissioner, on behalf  
28 of the State of Nebraska, shall designate the approved plan of the  
29 taxpayer as a project and, in consideration of the taxpayer's agreement,  
30 agree to allow the taxpayer to use the incentives contained in the  
31 Nebraska Advantage Act. 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 levels 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) A requirement that the company update the Department of Revenue  
11 annually on any changes in plans or circumstances which affect the  
12 timetable of sales tax refunds as set out in the application. If the  
13 company fails to comply with this requirement, the Tax Commissioner may  
14 defer any pending sales tax refunds until the company does comply.

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

1 the property tax exemption from being considered new investment under the  
2 Nebraska Advantage Act.

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

12 (9) The taxpayer may request that an agreement be modified if the  
13 modification is consistent with the purposes of the act and does not  
14 require a change in the description of the project. An agreement may not  
15 be modified to a tier that would grant a higher level of benefits to the  
16 taxpayer or to a tier 1 project. Once satisfied that the modification to  
17 the agreement is consistent with the purposes stated in the act, the Tax  
18 Commissioner and taxpayer may amend the agreement. For a tier 6 project,  
19 the taxpayer must agree to limit the project to qualified activities  
20 allowable under tier 2 and tier 4.

21 Sec. 9. Section 77-5725, Revised Statutes Cumulative Supplement,  
22 2020, is amended to read:

23 77-5725 (1) Applicants may qualify for benefits under the Nebraska  
24 Advantage Act in one of six tiers:

25 (a) Tier 1, investment in qualified property of at least one million  
26 dollars and the hiring of at least ten new employees. There shall be no  
27 new project applications for benefits under this tier filed after  
28 December 31, 2020. All complete project applications filed on or before  
29 December 31, 2020, shall be considered by the Tax Commissioner and  
30 approved if the project and taxpayer qualify for benefits. Agreements may  
31 be executed with regard to completed project applications filed on or

1 before December 31, 2020. All project agreements pending, approved, or  
2 entered into before such date shall continue in full force and effect;

3 (b) Tier 2, (i) investment in qualified property of at least three  
4 million dollars and the hiring of at least thirty new employees or (ii)  
5 for a large data center project, investment in qualified property for the  
6 data center of at least two hundred million dollars and the hiring for  
7 the data center of at least thirty new employees. There shall be no new  
8 project applications for benefits under this tier filed after December  
9 31, 2020. All complete project applications filed on or before December  
10 31, 2020, shall be considered by the Tax Commissioner and approved if the  
11 project and taxpayer qualify for benefits. Agreements may be executed  
12 with regard to completed project applications filed on or before December  
13 31, 2020. All project agreements pending, approved, or entered into  
14 before such date shall continue in full force and effect;

15 (c) Tier 3, the hiring of at least thirty new employees. There shall  
16 be no new project applications for benefits under this tier filed after  
17 December 31, 2020. All complete project applications filed on or before  
18 December 31, 2020, shall be considered by the Tax Commissioner and  
19 approved if the project and taxpayer qualify for benefits. Agreements may  
20 be executed with regard to completed project applications filed on or  
21 before December 31, 2020. All project agreements pending, approved, or  
22 entered into before such date shall continue in full force and effect;

23 (d) Tier 4, investment in qualified property of at least ten million  
24 dollars and the hiring of at least one hundred new employees. There shall  
25 be no new project applications for benefits under this tier filed after  
26 December 31, 2020. All complete project applications filed on or before  
27 December 31, 2020, shall be considered by the Tax Commissioner and  
28 approved if the project and taxpayer qualify for benefits. Agreements may  
29 be executed with regard to completed project applications filed on or  
30 before December 31, 2020. All project agreements pending, approved, or  
31 entered into before such date shall continue in full force and effect;

1 (e) Tier 5, (i) investment in qualified property of at least thirty  
2 million dollars or (ii) for the production of electricity by using one or  
3 more sources of renewable energy to produce electricity for sale as  
4 described in subdivision (1)(j) of section 77-5715, investment in  
5 qualified property of at least twenty million dollars. Failure to  
6 maintain an average number of equivalent employees as defined in section  
7 77-5727 greater than or equal to the number of equivalent employees in  
8 the base year shall result in a partial recapture of benefits. There  
9 shall be no new project applications for benefits under this tier filed  
10 after December 31, 2020. All complete project applications filed on or  
11 before December 31, 2020, shall be considered by the Tax Commissioner and  
12 approved if the project and taxpayer qualify for benefits. Agreements may  
13 be executed with regard to completed project applications filed on or  
14 before December 31, 2020. All project agreements pending, approved, or  
15 entered into before such date shall continue in full force and effect;  
16 and

17 (f) Tier 6, investment in qualified property of at least ten million  
18 dollars and the hiring of at least seventy-five new employees or the  
19 investment in qualified property of at least one hundred million dollars  
20 and the hiring of at least fifty new employees. There shall be no new  
21 project applications for benefits under this tier filed after December  
22 31, 2020. All complete project applications filed on or before December  
23 31, 2020, shall be considered by the Tax Commissioner and approved if the  
24 project and taxpayer qualify for benefits. Agreements may be executed  
25 with regard to completed project applications filed on or before December  
26 31, 2020. All project agreements pending, approved, or entered into  
27 before such date shall continue in full force and effect.

28 (2) When the taxpayer has met the required levels of employment and  
29 investment contained in the agreement for a tier 1, tier 2, tier 4, tier  
30 5, or tier 6 project, the taxpayer shall be entitled to the following  
31 incentives:

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

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

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

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

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

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

31 (b)(i) ~~(b)~~ A refund of all sales and use taxes for a tier 2, tier 4,

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

9 (ii) An exemption from all sales and use taxes for a tier 2 large  
10 data center project or a tier 5 project that is sequential to a tier 2  
11 large data center project imposed under the Local Option Revenue Act, the  
12 Nebraska Revenue Act of 1967, and sections 13-319, 13-324, 13-2813, and  
13 77-6403 on the types of purchases, including rentals, listed in  
14 subdivision (a) of this subsection for such purchases, including rentals,  
15 occurring during each year of the entitlement period in which the  
16 taxpayer is at or above the required levels of employment and investment,  
17 except that the exemption shall be for the actual materials purchased  
18 with respect to subdivisions (2)(a)(iii), (iv), and (v) of this section.  
19 The Tax Commissioner shall issue such rules, regulations, certificates,  
20 and forms as are appropriate to implement the efficient use of this  
21 exemption.

22 (3) For agreements involving a tier 2 large data center project or a  
23 tier 5 project that is sequential to a tier 2 large data center project:

24 (a) Within sixty days after the operative date of this section, any  
25 taxpayer who meets the requirements of subsection (1) of section  
26 77-2705.01 shall be issued a direct payment permit under section  
27 77-2705.01, unless the taxpayer has opted out of this requirement. For  
28 any taxpayer who is issued a direct payment permit, until such taxpayer  
29 meets the required levels of employment and investment contained in the  
30 agreement, the taxpayer must pay and remit any applicable sales and use  
31 taxes as required by the Tax Commissioner. Any taxpayer who is issued a



1 direct payment permit under this subdivision or who otherwise receives  
2 the benefit of any refunds or exemptions under this section shall comply  
3 with all data disclosure requirements in subsection (6) of section  
4 77-27,144, including disclosures to a municipality which would have  
5 received sales and use taxes but for an exemption allowed under this  
6 section; and

7 (b) If the taxpayer meets the required levels of employment and  
8 investment contained in the agreement, the taxpayer shall receive the  
9 sales tax refunds described in subdivision (2)(a) of this section. For  
10 any year in which the taxpayer is not at the required levels of  
11 employment and investment, the taxpayer shall report all sales and use  
12 taxes owed for the period on the taxpayer's tax return.

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

30 (a) Average annual wage means the total compensation paid to  
31 employees during the year at the project who are not base-year employees

1 and who are paid wages equal to at least sixty percent of the Nebraska  
2 average weekly wage for the year of application, excluding any  
3 compensation in excess of one million dollars paid to any one employee  
4 during the year, divided by the number of equivalent employees making up  
5 such total compensation;

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

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

14 (5) ~~(4)~~ Any taxpayer who qualifies for a tier 6 project shall be  
15 entitled to a credit equal to ten percent times the total compensation  
16 paid to all employees, other than base-year employees, excluding any  
17 compensation in excess of one million dollars paid to any one employee  
18 during the year, employed at the project.

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

28 (7) ~~(6)~~ The credits prescribed in subsections (4) ~~(3)~~, (5) ~~(4)~~, and  
29 (6) ~~(5)~~ of this section shall be allowable for compensation paid and  
30 investments made during each year of the entitlement period that the  
31 taxpayer is at or above the required levels of employment and investment.

1           (8) ~~(7)~~ The credit prescribed in subsection (6) ~~(5)~~ of this section  
2 shall also be allowable during the first year of the entitlement period  
3 for investment in qualified property at the project after the date of the  
4 application and before the required levels of employment and investment  
5 were met.

6           (9)(a) ~~(8)(a)~~ Property described in subdivisions (9)(c)(i) ~~(8)(c)(i)~~  
7 through (v) of this section used in connection with a project or  
8 projects, whether purchased or leased, and placed in service by the  
9 taxpayer after the date the application was filed shall constitute  
10 separate classes of property and are eligible for exemption under the  
11 conditions and for the time periods provided in subdivision (9)(b) ~~(8)(b)~~  
12 of this section.

13           (b)(i) A taxpayer who has met the required levels of employment and  
14 investment for a tier 4 project shall receive the exemption of property  
15 in subdivisions (9)(c)(ii) ~~(8)(c)(ii)~~, (iii), and (iv) of this section. A  
16 taxpayer who has met the required levels of employment and investment for  
17 a tier 6 project shall receive the exemption of property in subdivisions  
18 (9)(c)(ii) ~~(8)(c)(ii)~~, (iii), (iv), and (v) of this section. Such  
19 property shall be eligible for the exemption from the first January 1  
20 following the end of the year during which the required levels were  
21 exceeded through the ninth December 31 after the first year property  
22 included in subdivisions (9)(c)(ii) ~~(8)(c)(ii)~~, (iii), (iv), and (v) of  
23 this section qualifies for the exemption.

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

31           (iii) A taxpayer who has filed an application that describes a tier

1 2 large data center project or a tier 5 project that is sequential to a  
2 tier 2 large data center project for which the entitlement period has  
3 expired shall receive the exemption of all property in subdivision (9)(c)  
4 ~~(8)(e)~~ of this section beginning any January 1 after the date the  
5 property was placed in service. Such property shall be eligible for  
6 exemption from the tax on personal property from the January 1 preceding  
7 the first claim for exemption approved under this subdivision through the  
8 ninth December 31 after the year the first claim for exemption is  
9 approved.

10 (iv) A taxpayer who has a project for an Internet web portal or a  
11 data center and who has met the required levels of employment and  
12 investment for a tier 2 project or the required level of investment for a  
13 tier 5 project, taking into account only the employment and investment at  
14 the web portal or data center project, shall receive the exemption of  
15 property in subdivision (9)(c)(ii) ~~(8)(e)(ii)~~ of this section. Such  
16 property shall be eligible for the exemption from the first January 1  
17 following the end of the year during which the required levels were  
18 exceeded through the ninth December 31 after the first year any property  
19 included in subdivisions (9)(c)(ii) ~~(8)(e)(ii)~~, (iii), (iv), and (v) of  
20 this section qualifies for the exemption.

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

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

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

31 (ii) Computer systems, made up of equipment that is interconnected

1 in order to enable the acquisition, storage, manipulation, management,  
2 movement, control, display, transmission, or reception of data involving  
3 computer software and hardware, used for business information processing  
4 which require environmental controls of temperature and power and which  
5 are capable of simultaneously supporting more than one transaction and  
6 more than one user. A computer system includes peripheral components  
7 which require environmental controls of temperature and power connected  
8 to such computer systems. Peripheral components shall be limited to  
9 additional memory units, tape drives, disk drives, power supplies,  
10 cooling units, data switches, and communication controllers;

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

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

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

19 (d) In order to receive the property tax exemptions allowed by  
20 subdivision (9)(c) ~~(8)(e)~~ of this section, the taxpayer shall annually  
21 file a claim for exemption with the Tax Commissioner on or before May 1.  
22 The form and supporting schedules shall be prescribed by the Tax  
23 Commissioner and shall list all property for which exemption is being  
24 sought under this section. A separate claim for exemption must be filed  
25 for each project and each county in which property is claimed to be  
26 exempt. A copy of this form must also be filed with the county assessor  
27 in each county in which the applicant is requesting exemption. The Tax  
28 Commissioner shall determine whether a taxpayer is eligible to obtain  
29 exemption for personal property based on the criteria for exemption and  
30 the eligibility of each item listed for exemption and, on or before  
31 August 1, certify such to the taxpayer and to the affected county

1 assessor.

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

7 (b) For tier 1, tier 2, tier 4, and tier 5 projects other than tier  
8 5 projects described in subdivision (1)(e)(ii) of this section, beginning  
9 October 1, 2006, and each October 1 thereafter, the average Producer  
10 Price Index for all commodities, published by the United States  
11 Department of Labor, Bureau of Labor Statistics, for the most recent  
12 twelve available periods shall be divided by the Producer Price Index for  
13 the first quarter of 2006 and the result multiplied by the applicable  
14 investment threshold. The investment thresholds shall be adjusted for  
15 cumulative inflation since 2006.

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

23 (d) For a tier 2 large data center project, beginning October 1,  
24 2012, and each October 1 thereafter, the average Producer Price Index for  
25 all commodities, published by the United States Department of Labor,  
26 Bureau of Labor Statistics, for the most recent twelve available periods  
27 shall be divided by the Producer Price Index for the first quarter of  
28 2012 and the result multiplied by the applicable investment threshold.  
29 The investment thresholds shall be adjusted for cumulative inflation  
30 since 2012.

31 (e) If the resulting amount is not a multiple of one million

1 dollars, the amount shall be rounded to the next lowest one million  
2 dollars.

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

7 Sec. 10. Section 77-5726, Revised Statutes Cumulative Supplement,  
8 2020, is amended to read:

9 77-5726 (1)(a) The credits prescribed in section 77-5725 for a year  
10 shall be established by filing the forms required by the Tax Commissioner  
11 with the income tax return for the taxable year which includes the end of  
12 the year the credits were earned. The credits may be used and shall be  
13 applied in the order in which they were first allowed. The credits may be  
14 used after any other nonrefundable credits to reduce the taxpayer's  
15 income tax liability imposed by sections 77-2714 to 77-27,135. Credits  
16 may be used beginning with the taxable year which includes December 31 of  
17 the year the required minimum levels were reached. The last year for  
18 which credits may be used is the taxable year which includes December 31  
19 of the last year of the carryover period. Any decision on how part of the  
20 credit is applied shall not limit how the remaining credit could be  
21 applied under this section.

22 (b) The taxpayer may use the credit provided in subsection (4) ~~(3)~~  
23 of section 77-5725 to reduce the taxpayer's income tax withholding  
24 employer or payor tax liability under section 77-2756 or 77-2757 to the  
25 extent such liability is attributable to the number of new employees at  
26 the project, excluding any compensation in excess of one million dollars  
27 paid to any one employee during the year. The taxpayer may use the credit  
28 provided in subsection (5) ~~(4)~~ of section 77-5725 to reduce the  
29 taxpayer's income tax withholding employer or payor tax liability under  
30 section 77-2756 or 77-2757 to the extent such liability is attributable  
31 to all employees employed at the project, other than base-year employees

1 and excluding any compensation in excess of one million dollars paid to  
2 any one employee during the year. To the extent of the credit used, such  
3 withholding shall not constitute public funds or state tax revenue and  
4 shall not constitute a trust fund or be owned by the state. The use by  
5 the taxpayer of the credit shall not change the amount that otherwise  
6 would be reported by the taxpayer to the employee under section 77-2754  
7 as income tax withheld and shall not reduce the amount that otherwise  
8 would be allowed by the state as a refundable credit on an employee's  
9 income tax return as income tax withheld under section 77-2755.

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

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

20 If the amount of credit used by the taxpayer against income tax  
21 withholding exceeds this amount, the excess withholding shall be returned  
22 to the Department of Revenue in the manner provided in section 77-2756,  
23 such excess amount returned shall be considered unused, and the amount of  
24 unused credits may be used as otherwise permitted in this section or  
25 shall carry over to the extent authorized in subdivision (1)(e) of this  
26 section.

27 (c) Credits may be used to obtain a refund of sales and use taxes  
28 under the Local Option Revenue Act, the Nebraska Revenue Act of 1967, and  
29 sections 13-319, 13-324, 13-2813, and 77-6403 which are not otherwise  
30 refundable that are paid on purchases, including rentals, for use at the  
31 project for a tier 1, tier 2, tier 3, or tier 4 project or for use within



1 this state for a tier 2 large data center project or a tier 6 project.

2 (d) The credits earned for a tier 6 project may be used to obtain a  
3 payment from the state equal to the real property taxes due after the  
4 year the required levels of employment and investment were met and before  
5 the end of the carryover period, for real property that is included in  
6 such project and acquired by the taxpayer, whether by lease or purchase,  
7 after the date the application was filed. Once the required levels of  
8 employment and investment for a tier 2 large data center project have  
9 been met, the credits earned for a tier 2 large data center project may  
10 be used to obtain a payment from the state equal to the real property  
11 taxes due after the year of application and before the end of the  
12 carryover period, for real property that is included in such project and  
13 acquired by the taxpayer, whether by lease or purchase, after the date  
14 the application was filed. The payment from the state shall be made only  
15 after payment of the real property taxes have been made to the county as  
16 required by law. Payments shall not be allowed for any taxes paid on real  
17 property for which the taxes are divided under section 18-2147 or 58-507.

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

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

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

29 (c) Refund claims for materials purchased by a purchasing agent  
30 shall include:

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

1 (ii) The contract price; and

2 (iii)(A) For refunds under subdivision (2)(a)(iii) or (2)(a)(v) of  
3 section 77-5725, a certification by the contractor or repairperson of the  
4 percentage of the materials incorporated into or annexed to the project  
5 on which sales and use taxes were paid to Nebraska after appointment as  
6 purchasing agent; or

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

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

21 (e) If a claim for a refund of sales and use taxes under the Local  
22 Option Revenue Act or sections 13-319, 13-324, 13-2813, and 77-6403 of  
23 more than twenty-five thousand dollars is filed by June 15 of a given  
24 year, the refund shall be made on or after November 15 of the same year.  
25 If such a claim is filed on or after June 16 of a given year, the refund  
26 shall not be made until on or after November 15 of the following year.  
27 The Tax Commissioner shall notify the affected city, village, county, or  
28 municipal county of the amount of refund claims of sales and use taxes  
29 under the Local Option Revenue Act or sections 13-319, 13-324, 13-2813,  
30 and 77-6403 that are in excess of twenty-five thousand dollars on or  
31 before July 1 of the year before the claims will be paid under this

1 section.

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

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

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

23 Sec. 11. Section 77-5727, Reissue Revised Statutes of Nebraska, is  
24 amended to read:

25 77-5727 (1)(a) If the taxpayer fails either to meet the required  
26 levels of employment or investment for the applicable project by the end  
27 of the fourth year after the end of the year the application was  
28 submitted for a tier 1, tier 3, or tier 6 project or by the end of the  
29 sixth year after the end of the year the application was submitted for a  
30 tier 2, tier 4, or tier 5 project or to utilize such project in a  
31 qualified business at employment and investment levels at or above those

1 required in the agreement for the entire entitlement period, all or a  
2 portion of the incentives set forth in the Nebraska Advantage Act shall  
3 be recaptured or disallowed.

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

8 (2) In the case of a taxpayer who has failed to maintain the project  
9 at the required levels of employment or investment for the entire  
10 entitlement period, any reduction in the personal property tax, any  
11 refunds in tax or exemptions from tax allowed under subsection (2) of  
12 section 77-5725, and any refunds or reduction in tax allowed because of  
13 the use of a credit allowed under section 77-5725 shall be partially  
14 recaptured from either the taxpayer or the owner of the improvement to  
15 real estate and any carryovers of credits shall be partially disallowed.  
16 The amount of the recapture shall be a percentage equal to the number of  
17 years the taxpayer did not maintain the project at or above the required  
18 levels of investment and employment divided by the number of years of the  
19 project's entitlement period multiplied by the refunds and exemptions  
20 allowed, reduction in personal property tax, the credits used, and the  
21 remaining carryovers. In addition, the last remaining year of personal  
22 property tax exemption shall be disallowed for each year the taxpayer did  
23 not maintain such project at or above the required levels of employment  
24 or investment.

25 (3) In the case of a taxpayer qualified under tier 5 who has failed  
26 to maintain the average number of equivalent employees at the project at  
27 the end of the six years following the year the taxpayer attained the  
28 required amount of investment, any refunds or exemptions in tax allowed  
29 under subsection (2) of section 77-5725 or any reduction in the personal  
30 property tax under section 77-5725 shall be partially recaptured from the  
31 taxpayer. The amount of recapture shall be the total amount of refunds,

1 exemptions, and reductions in tax allowed for all years times the  
2 reduction in the average number of equivalent employees employed at the  
3 end of the entitlement period from the number of equivalent employees  
4 employed in the base year divided by the number of equivalent employees  
5 employed in the base year. For purposes of this subsection, the average  
6 number of equivalent employees shall be calculated at the end of the  
7 entitlement period by adding the number of equivalent employees in the  
8 year the taxpayer attains the required level of investment and each of  
9 the next following six years and dividing the result by seven.

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

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

23 (6)(a) Except as provided in subdivision (6)(b) of this section, any  
24 personal property tax that would have been due except for the exemption  
25 allowed under the Nebraska Advantage Act, to the extent it becomes due  
26 under this section, shall be considered delinquent and shall be  
27 immediately due and payable to the county or counties in which the  
28 property was located when exempted.

29 (b) For a tier 2 large data center project, any personal property  
30 tax that would have been due except for the exemption under the Nebraska  
31 Advantage Act, together with interest at the rate provided in section

1 45-104.01 from the original delinquency date of the tax that would have  
2 been due until the date paid, to the extent it becomes due under this  
3 section, shall be considered delinquent and shall be immediately payable  
4 to the county or counties in which the property was located when  
5 exempted.

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

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

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

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

22 Sec. 12. Section 77-5731, Reissue Revised Statutes of Nebraska, is  
23 amended to read:

24 77-5731 (1) The Tax Commissioner shall submit electronically an  
25 annual report to the Legislature no later than October 31 ~~July 15~~ of each  
26 year. The report shall be on a fiscal year, accrual basis that satisfies  
27 the requirements set by the Governmental Accounting Standards Board. The  
28 Department of Revenue shall, on or before December 15 ~~September 1~~ of each  
29 even-numbered year, appear at a joint hearing of the Appropriations  
30 Committee of the Legislature and the Revenue Committee of the Legislature  
31 and present the report. Any supplemental information requested by three

1 or more committee members shall be presented within thirty days after the  
2 request.

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

7 (3) The report shall also state, for taxpayers who are parties to  
8 agreements, by industry group (a) the specific incentive options applied  
9 for under the Nebraska Advantage Act, (b) the refunds and exemptions  
10 allowed on the investment, (c) the credits earned, (d) the credits used  
11 to reduce the corporate income tax and the credits used to reduce the  
12 individual income tax, (e) the credits used to obtain sales and use tax  
13 refunds, (f) the credits used against withholding liability, (g) the  
14 number of jobs created under the act, (h) the expansion of capital  
15 investment, (i) the estimated wage levels of jobs created under the act  
16 subsequent to the application date, (j) the total number of qualified  
17 applicants, (k) the projected future state revenue gains and losses, (l)  
18 the sales tax refunds owed, (m) the credits outstanding under the act,  
19 (n) the value of personal property exempted by class in each county under  
20 the act, (o) the value of property for which payments equal to property  
21 taxes paid were allowed in each county, and (p) the total amount of the  
22 payments.

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

30 (5) The report shall provide an explanation of the audit and review  
31 processes of the department in approving and rejecting applications or

1 the grant of incentives and in enforcing incentive recapture. The report  
2 shall also specify the median period of time between the date of  
3 application and the date the agreement is executed for all agreements  
4 executed by June 30 ~~December 31~~ of the current ~~prior~~ year.

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

20 (7) The report shall include an executive summary which shows  
21 aggregate information for all projects for which the information on  
22 incentives used in subsection (6) of this section is reported as follows:  
23 (a) The total incentives used by all taxpayers for projects detailed in  
24 subsection (6) of this section during the previous two years; (b) the  
25 number of projects; (c) the new jobs at the project for which credits  
26 have been granted; (d) the average compensation paid employees in the  
27 state in the year of application and for the new jobs at the project; and  
28 (e) the total investment for which incentives were granted. The executive  
29 summary shall summarize the number of states which grant investment tax  
30 credits, job tax credits, sales and use tax refunds or exemptions for  
31 qualified investment, and personal property tax exemptions and the



1 investment and employment requirements under which they may be granted.

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

4 Sec. 13. Section 77-5735, Reissue Revised Statutes of Nebraska, is  
5 amended to read:

6 77-5735 (1) The changes made in sections 77-5703, 77-5708, 77-5712,  
7 77-5714, 77-5715, 77-5723, 77-5725, 77-5726, 77-5727, and 77-5731 by Laws  
8 2008, LB895, and sections 77-5707.01, 77-5719.01, and 77-5719.02 apply to  
9 all applications filed on and after April 18, 2008. For all applications  
10 filed prior to such date, the provisions of the Nebraska Advantage Act as  
11 they existed immediately prior to such date apply.

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

20 (3) The changes made in sections 77-5707, 77-5715, 77-5719, and  
21 77-5725 by Laws 2010, LB918, apply to all applications filed on or after  
22 July 15, 2010. For all applications filed prior to such date, the  
23 provisions of the Nebraska Advantage Act as they existed immediately  
24 prior to such date apply.

25 (4) The changes made in sections 77-5701, 77-5703, 77-5705, 77-5715,  
26 77-5723, 77-5725, 77-5726, and 77-5727 by Laws 2012, LB1118, apply to all  
27 applications filed on or after March 8, 2012. For all applications filed  
28 prior to such date, the provisions of the Nebraska Advantage Act as they  
29 existed immediately prior to such date apply.

30 (5) The changes made in sections 77-5707.01, 77-5709, 77-5712,  
31 77-5719, 77-5720, 77-5723, and 77-5726 by Laws 2013, LB34, apply to all

1 applications filed on or after September 6, 2013. For all applications  
2 filed prior to such date, the provisions of the Nebraska Advantage Act as  
3 they existed immediately prior to such date apply.

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

6 (7) The changes made in sections 77-5705, 77-5723, 77-5725, 77-5726,  
7 and 77-5727 and in subsections (3), (6), and (7) of section 77-5731 by  
8 this legislative bill apply to any agreement entered into under the  
9 Nebraska Advantage Act that is still active on the operative date of this  
10 section if the taxpayer makes a one-time election, within the time period  
11 prescribed by the Tax Commissioner, to have such changes apply to such  
12 taxpayer's agreement. In the absence of such an election, the provisions  
13 of such sections and subsections as they existed immediately prior to the  
14 operative date of this section shall apply to such agreement. For each  
15 election made under this subsection, the Tax Commissioner shall disclose  
16 such election, the identity of the taxpayer, and the location of the  
17 taxpayer's project to each municipality in which the project is located.  
18 The Tax Commissioner shall make such disclosures within thirty days after  
19 the election.

20 Sec. 14. Section 77-5807, Reissue Revised Statutes of Nebraska, is  
21 amended to read:

22 77-5807 No later than October 31 of each year, Beginning July 15,  
23 2007, and each July 15 thereafter the Tax Commissioner shall prepare a  
24 report stating the total amount of credits claimed on income tax returns  
25 or as refunds of sales and use tax during the previous fiscal calendar  
26 year. The report shall be on a fiscal year, accrual basis that satisfies  
27 the requirements set by the Governmental Accounting Standards Board. The  
28 Department of Revenue shall, on or before December 15 ~~September 1~~ of each  
29 even-numbered year, appear at a joint hearing of the Appropriations  
30 Committee of the Legislature and the Revenue Committee of the Legislature  
31 and present the report. Any supplemental information requested by three

1 or more committee members shall be presented within thirty days after the  
2 request. No information shall be provided in the report that is protected  
3 by state or federal confidentiality laws.

4 Sec. 15. Section 77-5907, Revised Statutes Supplement, 2021, is  
5 amended to read:

6 77-5907 (1) The Tax Commissioner shall prepare a report identifying  
7 the following aggregate amounts for the previous fiscal calendar year:  
8 (a) The amount of projected employment and investment anticipated by  
9 taxpayers receiving tentative tax credits and the tentative tax credits  
10 granted; (b) the actual amount of employment and investment made by  
11 taxpayers that were granted tentative tax credits in the previous fiscal  
12 ~~calendar~~ year; (c) the tax credits used; and (d) the tentative tax  
13 credits that expired. The report shall be issued on or before October 31  
14 of each year July 15, 2007, and each July 15 thereafter. The report shall  
15 be on a fiscal year, accrual basis that satisfies the requirements set by  
16 the Governmental Accounting Standards Board. The Department of Revenue  
17 shall, on or before December 15 ~~September 1~~ of each even-numbered year,  
18 appear at a joint hearing of the Appropriations Committee of the  
19 Legislature and the Revenue Committee of the Legislature and present the  
20 report. Any supplemental information requested by three or more committee  
21 members shall be presented within thirty days after the request.

22 (2) Beginning with applications filed on or after August 28, 2021,  
23 the report shall provide information on project-specific total credits  
24 used every two years for each approved application and shall disclose (a)  
25 the identity of the taxpayer, (b) the location or locations where the  
26 taxpayer is earning credits, (c) the new investment or new employment  
27 that was actually produced by the taxpayer to earn credits, and (d) the  
28 total credits used during the immediately preceding two years, expressed  
29 as a single, aggregated total.

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

1           Sec. 16. Section 77-6805, Revised Statutes Cumulative Supplement,  
2 2020, is amended to read:

3           77-6805 Base year means the year immediately preceding the year of  
4 application, subject to the following exceptions:

5           (1) Except as otherwise provided in subdivision (2) of this section,  
6 ~~except that~~ if the year of application is 2021, the base year is either  
7 2019 or 2020, whichever year the applicant had the larger number of  
8 equivalent employees at the qualified location or locations; and -

9           (2) If the year of application is 2021 or 2022 and the applicant  
10 increased the number of equivalent employees at the qualified location or  
11 locations in either 2020 or 2021 in response to the COVID-19 pandemic,  
12 the base year is 2019.

13          Sec. 17. Section 77-6811, Revised Statutes Cumulative Supplement,  
14 2020, is amended to read:

15          77-6811 Investment means the value of qualified property  
16 incorporated into or used at the qualified location or locations. For  
17 qualified property owned by the taxpayer, the value shall be the original  
18 cost of the property. Improvements to real estate qualify as investment  
19 even if the entire improvement is not finished or ready for use. The  
20 percentage of completion of the improvement determines the portion of the  
21 investment that has occurred for any given year. For qualified property  
22 rented by the taxpayer, the average net annual rent shall be multiplied  
23 by the number of years of the lease for which the taxpayer was originally  
24 bound, not to exceed ten years. The rental of land included in and  
25 incidental to the leasing of a building shall not be excluded from the  
26 computation. For purposes of this section, original cost means the amount  
27 required to be capitalized for depreciation, amortization, or other  
28 recovery under the Internal Revenue Code of 1986, as amended. Any amount,  
29 including the labor of the taxpayer, that is capitalized as a part of the  
30 cost of the qualified property or that is written off under section 179  
31 of the Internal Revenue Code of 1986, as amended, shall be considered

1 part of the original cost.

2 Sec. 18. Section 77-6815, Revised Statutes Cumulative Supplement,  
3 2020, is amended to read:

4 77-6815 (1) Number of new employees, for purposes of subdivisions  
5 (1)(b), (4)(d), (5)(c), and (8)(b)(iii) of section 77-6831, means the  
6 lesser of:

7 (a) The number of equivalent employees that are employed at the  
8 qualified location or locations during a year that are in excess of the  
9 number of equivalent employees during the base year; or

10 (b) The sum of:

11 (i) The number of equivalent employees employed full-time at the  
12 qualified location or locations during a year who are not base-year  
13 employees, who meet the health coverage requirement of subsection (7) of  
14 this section, and who are paid compensation at a rate equal to at least  
15 one hundred fifty percent of the Nebraska statewide average hourly wage  
16 for the year of application; and

17 (ii) The number of equivalent employees who were not employed full-  
18 time at the qualified location during the base year and became employed  
19 full-time at the qualified location after the base year, after  
20 subtracting the hours worked by such employees in the base year, who meet  
21 the health coverage requirement of subsection (7) of this section, and  
22 who are paid compensation at a rate equal to at least one hundred fifty  
23 percent of the Nebraska statewide average hourly wage for the year of  
24 application.

25 (2) Number of new employees, for purposes of subdivisions (4)(a)(i)  
26 and (5)(a)(i) of section 77-6831, means the lesser of:

27 (a) The number of equivalent employees that are employed at the  
28 qualified location or locations during a year that are in excess of the  
29 number of equivalent employees during the base year; or

30 (b) The sum of:

31 (i) The number of equivalent employees employed full-time at the

1 qualified location or locations during a year who are not base-year  
2 employees, who meet the health coverage requirement of subsection (7) of  
3 this section, and who are paid compensation at a rate equal to at least  
4 ninety percent of the Nebraska statewide average hourly wage for the year  
5 of application; and

6 (ii) The number of equivalent employees who were not employed full-  
7 time at the qualified location during the base year and became employed  
8 full-time at the qualified location after the base year, after  
9 subtracting the hours worked by such employees in the base year, who meet  
10 the health coverage requirement of subsection (7) of this section, and  
11 who are paid compensation at a rate equal to at least ninety percent of  
12 the Nebraska statewide average hourly wage for the year of application.

13 (3) Number of new employees, for purposes of subdivisions (4)(a)(ii)  
14 and (5)(a)(ii) of section 77-6831, means the lesser of:

15 (a) The number of equivalent employees that are employed at the  
16 qualified location or locations during a year that are in excess of the  
17 number of equivalent employees during the base year; or

18 (b) The sum of:

19 (i) The number of equivalent employees employed full-time at the  
20 qualified location or locations during a year who are not base-year  
21 employees, who meet the health coverage requirement of subsection (7) of  
22 this section, and who are paid compensation at a rate equal to at least  
23 seventy-five percent of the Nebraska statewide average hourly wage for  
24 the year of application; and

25 (ii) The number of equivalent employees who were not employed full-  
26 time at the qualified location during the base year and became employed  
27 full-time at the qualified location after the base year, after  
28 subtracting the hours worked by such employees in the base year, who meet  
29 the health coverage requirement of subsection (7) of this section, and  
30 who are paid compensation at a rate equal to at least seventy-five  
31 percent of the Nebraska statewide average hourly wage for the year of

1 application.

2 (4) Number of new employees, for purposes of subdivisions (4)(a)  
3 (iii), (4)(e), (5)(a)(iii), and (5)(d) of section 77-6831, means the  
4 lesser of:

5 (a) The number of equivalent employees that are employed at the  
6 qualified location or locations during a year that are in excess of the  
7 number of equivalent employees during the base year; or

8 (b) The sum of:

9 (i) The number of equivalent employees employed full-time at the  
10 qualified location or locations during a year who are not base-year  
11 employees, who meet the health coverage requirement of subsection (7) of  
12 this section, and who are paid compensation at a rate equal to at least  
13 seventy percent of the Nebraska statewide average hourly wage for the  
14 year of application; and

15 (ii) The number of equivalent employees who were not employed full-  
16 time at the qualified location during the base year and became employed  
17 full-time at the qualified location after the base year, after  
18 subtracting the hours worked by such employees in the base year, who meet  
19 the health coverage requirement of subsection (7) of this section, and  
20 who are paid compensation at a rate equal to at least seventy percent of  
21 the Nebraska statewide average hourly wage for the year of application.

22 (5) Number of new employees, for all other purposes, except as  
23 otherwise provided in the Imagine Nebraska Act, means the lesser of:

24 (a) The number of equivalent employees that are employed at the  
25 qualified location or locations during a year that are in excess of the  
26 number of equivalent employees during the base year; or

27 (b) The sum of:

28 (i) The number of equivalent employees employed full-time at the  
29 qualified location or locations during a year who are not base-year  
30 employees, who meet the health coverage requirement of subsection (7) of  
31 this section, and who are paid compensation at a rate equal to at least

1 the Nebraska statewide average hourly wage for the year of application;  
2 and

3 (ii) The number of equivalent employees who were not employed full-  
4 time at the qualified location during the base year and became employed  
5 full-time at the qualified location after the base year, after  
6 subtracting the hours worked by such employees in the base year, who meet  
7 the health coverage requirement of subsection (7) of this section, and  
8 who are paid compensation at a rate equal to at least the Nebraska  
9 statewide average hourly wage for the year of application.

10 (6) For employees who work both at a qualified location and also  
11 perform services for the taxpayer at other nonqualified locations, they  
12 will be included in determining the number of new employees if more than  
13 fifty percent of the time for which they are compensated is spent at the  
14 qualified location. For any year other than the base year, employees who  
15 work at the qualified location fifty percent or less of the time for  
16 which they are compensated are not considered employed at the qualified  
17 location. For employees who work both at a qualified location and also  
18 perform services for the taxpayer at the employee's Nebraska residence,  
19 the time for which an employee is compensated for services performed at  
20 the employee's Nebraska residence will be considered spent at the  
21 qualified location.

22 (7) An employee meets the health coverage requirement if the  
23 taxpayer offers to that employee, for that year, the opportunity to  
24 enroll in minimum essential coverage under an eligible employer-sponsored  
25 plan, as those terms are defined and described in section 5000A of the  
26 Internal Revenue Code of 1986, as amended, and the regulations for such  
27 section.

28 (8) For purposes of this section, employed full-time means that the  
29 employee is a full-time employee as defined and described in section  
30 4980H of the Internal Revenue Code of 1986, as amended, and the  
31 regulations for such section.



1           Sec. 19. Section 77-6828, Revised Statutes Cumulative Supplement,  
2   2020, is amended to read:

3           77-6828 (1) Within ninety days after approval of the application,  
4   the director shall prepare and deliver a written agreement to the  
5   taxpayer for the taxpayer's signature. The taxpayer and the director  
6   shall enter into such written agreement. Under the agreement, the  
7   taxpayer shall agree to increase employment or investment at the  
8   qualified location or locations, report compensation, wage, and hour data  
9   at the qualified location or locations to the Department of Revenue  
10  annually, and report all qualified property at the qualified location or  
11  locations to the Department of Revenue annually. The director, on behalf  
12  of the State of Nebraska, shall agree to allow the taxpayer to use the  
13  incentives contained in the Imagine Nebraska Act. The application, and  
14  all supporting documentation, to the extent approved, shall be considered  
15  a part of the agreement. The agreement shall state:

16           (a) The qualified location or locations. If a location or locations  
17  are to be qualified under subsection (2) of section 77-6818, the  
18  agreement must include a commitment by the taxpayer that the seventy-five  
19  percent requirement of such subsection will be met;

20           (b) The type of documentation the taxpayer will need to supply to  
21  support its claim for incentives under the act;

22           (c) The date the application was complete;

23           (d) The E-verify number or numbers for the qualified location or  
24  locations provided by the United States Citizenship and Immigration  
25  Services;

26           (e) A requirement that the taxpayer provide any information needed  
27  by the director or the Tax Commissioner to perform their respective  
28  responsibilities under the Imagine Nebraska Act, in the manner specified  
29  by the director or Tax Commissioner;

30           (f) A requirement that the taxpayer provide an annually updated  
31  timetable showing the expected sales and use tax refunds and what year

1 they are expected to be claimed, in the manner specified by the Tax  
2 Commissioner. The timetable shall include both direct refunds due to  
3 investment and credits taken as sales and use tax refunds as accurately  
4 as reasonably possible;

5 (g) A requirement that the taxpayer update the Tax Commissioner  
6 annually, with its income tax return or in the manner specified by the  
7 Tax Commissioner, on any changes in plans or circumstances which it  
8 reasonably expects will affect the level of new investment and number of  
9 new employees at the qualified location or locations. If the taxpayer  
10 fails to comply with this requirement, the Tax Commissioner may defer any  
11 pending incentive utilization until the taxpayer does comply;

12 (h) A requirement that the taxpayer provide information regarding  
13 the value of health coverage provided to employees during the year who  
14 are not base-year employees and who are paid the required compensation as  
15 needed by the director or the Tax Commissioner to perform their  
16 respective responsibilities under the Imagine Nebraska Act, in the manner  
17 specified by the director or Tax Commissioner;

18 (i) A requirement that the taxpayer not violate any state or federal  
19 law against discrimination;~~and~~

20 (j) A requirement that the taxpayer offer a sufficient package of  
21 benefits to the employees employed full-time at the qualified location or  
22 locations during the year who are not base-year employees and who are  
23 paid the required compensation. If a taxpayer does not offer a sufficient  
24 package of benefits to any such employee for any year during the  
25 performance period, that employee shall not count toward the number of  
26 new employees for such year. For purposes of this subdivision, benefits  
27 means nonwage remuneration offered to an employee, including medical and  
28 dental insurance plans, pension, retirement, and profit-sharing plans,  
29 child care services, life insurance coverage, vision insurance coverage,  
30 disability insurance coverage, and any other nonwage remuneration as  
31 determined by the director. The director may adopt and promulgate rules

1 and regulations to specify what constitutes a sufficient package of  
2 benefits. In determining what constitutes a sufficient package of  
3 benefits, the director shall consider (i) benefit packages customarily  
4 offered in Nebraska by private employers to full-time employees, (ii) the  
5 impact of the cost of such benefits on the ability to attract new  
6 employment and investment under the Imagine Nebraska Act, and (iii) the  
7 costs that employees must bear to obtain benefits not offered by an  
8 employer; and -

9 (k) A requirement that the taxpayer provide the following  
10 information for the purpose of tax incentive performance audits:

11 (i) The most recent taxable valuations and levy rates for all  
12 qualified locations;

13 (ii) If credits are used for job training pursuant to subdivision  
14 (1)(e) of section 77-6832, a program schedule of the job training  
15 activities; and

16 (iii) If credits are used for talent recruitment pursuant to  
17 subdivision (1)(e) of section 77-6832, the city and state where recruited  
18 employees lived when the talent recruitment activities took place.

19 (2) The application, the agreement, all supporting information, and  
20 all other information reported to the director or the Tax Commissioner  
21 shall be kept confidential by the director and the Tax Commissioner,  
22 except for the name of the taxpayer, the qualified location or locations  
23 in the agreement, the estimated amounts of increased employment and  
24 investment stated in the application, the date of complete application,  
25 the date the agreement was signed, and the information required to be  
26 reported by section 77-6837. The application, the agreement, and all  
27 supporting information shall be provided by the director to the  
28 Department of Revenue. The director shall disclose, to any municipalities  
29 in which project locations exist, the approval of an application and the  
30 execution of an agreement under this section. The Tax Commissioner shall  
31 also notify each municipality of the amount and taxpayer identity for

1 each refund of local option sales and use taxes of the municipality  
2 within thirty days after the refund is allowed or approved. Disclosures  
3 shall be kept confidential by the municipality unless publicly disclosed  
4 previously by the taxpayer or by the State of Nebraska.

5 (3) An agreement under the Imagine Nebraska Act shall have a  
6 duration of no more than fifteen years. A taxpayer with an existing  
7 agreement may apply for and receive a new agreement for any qualified  
8 location or locations that are not part of an existing agreement under  
9 the Imagine Nebraska Act, but cannot apply for a new agreement for a  
10 qualified location designated in an existing agreement until after the  
11 end of the performance period for the existing agreement.

12 (4) The incentives contained in the Imagine Nebraska Act shall be in  
13 lieu of the tax credits allowed by the Nebraska Advantage Rural  
14 Development Act for any project. In computing credits under the Nebraska  
15 Advantage Rural Development Act, any investment or employment which is  
16 eligible for benefits or used in determining benefits under the Imagine  
17 Nebraska Act shall be subtracted from the increases computed for  
18 determining the credits under section 77-27,188. New investment or  
19 employment at a project location that results in the meeting or  
20 maintenance of the employment or investment requirements, the creation of  
21 credits, or refunds of taxes under the Nebraska Advantage Act shall not  
22 be considered new investment or employment for purposes of the Imagine  
23 Nebraska Act. The use of carryover credits under the Nebraska Advantage  
24 Act, the Employment and Investment Growth Act, the Invest Nebraska Act,  
25 the Nebraska Advantage Rural Development Act, or the Quality Jobs Act  
26 shall not preclude investment and employment from being considered new  
27 investment or employment under the Imagine Nebraska Act. The use of  
28 property tax exemptions at the project under the Employment and  
29 Investment Growth Act or the Nebraska Advantage Act does not preclude  
30 investment not eligible for such property tax exemptions from being  
31 considered new investment under the Imagine Nebraska Act.

1           Sec. 20. Section 77-6831, Revised Statutes Cumulative Supplement,  
2   2020, is amended to read:

3           77-6831 (1) A taxpayer shall be entitled to the sales and use tax  
4   incentives contained in subsection (2) of this section if the taxpayer:

5           (a) Attains a cumulative investment in qualified property of at  
6   least five million dollars and hires at least thirty new employees at the  
7   qualified location or locations before the end of the ramp-up period;

8           (b) Attains a cumulative investment in qualified property of at  
9   least two hundred fifty million dollars and hires at least two hundred  
10   fifty new employees at the qualified location or locations before the end  
11   of the ramp-up period; or

12           (c) Attains a cumulative investment in qualified property of at  
13   least fifty million dollars at the qualified location or locations before  
14   the end of the ramp-up period. To receive incentives under this  
15   subdivision, the taxpayer must meet the following conditions:

16           (i) The average compensation of the taxpayer's employees at the  
17   qualified location or locations for each year of the performance period  
18   must equal at least one hundred fifty percent of the Nebraska statewide  
19   average hourly wage for the year of application;

20           (ii) The taxpayer must offer to its employees who constitute full-  
21   time employees as defined and described in section 4980H of the Internal  
22   Revenue Code of 1986, as amended, and the regulations for such section,  
23   at the qualified location or locations for each year of the performance  
24   period, the opportunity to enroll in minimum essential coverage under an  
25   eligible employer-sponsored plan, as those terms are defined and  
26   described in section 5000A of the Internal Revenue Code of 1986, as  
27   amended, and the regulations for such section; and

28           (iii) The taxpayer must offer a sufficient package of benefits as  
29   described in subdivision (1)(j) of section 77-6828.

30           (2) A taxpayer meeting the requirements of subsection (1) of this  
31   section shall be entitled to the following sales and use tax incentives:

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

6 (i) Qualified property used at the qualified location or locations;

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

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

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

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

31 (b) An exemption from all sales and use taxes under the Local Option

1 Revenue Act, the Nebraska Revenue Act of 1967, the Qualified Judgment  
2 Payment Act, and sections 13-319, 13-324, and 13-2813 on the types of  
3 purchases, including rentals, listed in subdivision (a) of this  
4 subsection for such purchases, including rentals, occurring during each  
5 year of the performance period in which the taxpayer is at or above the  
6 required levels of employment and investment, except that the exemption  
7 shall be for the actual materials purchased with respect to subdivisions  
8 (2)(a)(iii), (iv), and (v) of this section. The Tax Commissioner shall  
9 issue such rules, regulations, certificates, and forms as are appropriate  
10 to implement the efficient use of this exemption.

11 (3)(a) Upon execution of the agreement, the taxpayer shall be issued  
12 a direct payment permit under section 77-2705.01, notwithstanding the  
13 three million dollars in purchases limitation in subsection (1) of  
14 section 77-2705.01, for each qualified location specified in the  
15 agreement, unless the taxpayer has opted out of this requirement in the  
16 agreement. For any taxpayer who is issued a direct payment permit, until  
17 such taxpayer makes the investment in qualified property and hires the  
18 new employees at the qualified location or locations as specified in  
19 subsection (1) of this section, the taxpayer must pay and remit any  
20 applicable sales and use taxes as required by the Tax Commissioner.

21 (b) If the taxpayer makes the investment in qualified property and  
22 hires the new employees at the qualified location or locations as  
23 specified in subsection (1) of this section, the taxpayer shall receive  
24 the sales tax refunds described in subdivision (2)(a) of this section.  
25 For any year in which the taxpayer is not at the required levels of  
26 employment and investment, the taxpayer shall report all sales and use  
27 taxes owed for the period on the taxpayer's ~~income tax return for the~~  
28 ~~year.~~

29 (4) The taxpayer shall be entitled to one of the following credits  
30 for payment of wages to new employees:

31 (a)(i) If a taxpayer attains a cumulative investment in qualified

1 property of at least one million dollars and hires at least ten new  
2 employees at the qualified location or locations before the end of the  
3 ramp-up period, the taxpayer shall be entitled to a credit equal to four  
4 percent times the average wage of new employees times the number of new  
5 employees. Wages in excess of one million dollars paid to any one  
6 employee during the year shall be excluded from the calculations under  
7 this subdivision;

8 (ii) If the taxpayer attains a cumulative investment in qualified  
9 property of at least one million dollars and hires at least ten new  
10 employees at the qualified location or locations before the end of the  
11 ramp-up period and the number of new employees and investment are at a  
12 qualified location in a county in Nebraska with a population of one  
13 hundred thousand or greater, and at which the majority of the business  
14 activities conducted are described in subdivision (1)(a) or (1)(n) of  
15 section 77-6818, the taxpayer shall be entitled to a credit equal to four  
16 percent times the average wage of new employees times the number of new  
17 employees. Wages in excess of one million dollars paid to any one  
18 employee during the year shall be excluded from the calculations under  
19 this subdivision; or

20 (iii) If the taxpayer attains a cumulative investment in qualified  
21 property of at least one million dollars and hires at least ten new  
22 employees at the qualified location or locations before the end of the  
23 ramp-up period and the number of new employees and investment are at a  
24 qualified location entirely within a county in Nebraska with a population  
25 of less than one hundred thousand, and at which the majority of the  
26 business activities conducted are described in subdivision (1)(a) or (1)  
27 (n) of section 77-6818, the taxpayer shall be entitled to a credit equal  
28 to six percent times the average wage of new employees times the number  
29 of new employees. For purposes of meeting the ten-employee requirement of  
30 this subdivision, the number of new employees shall be multiplied by two.  
31 Wages in excess of one million dollars paid to any one employee during



1 the year shall be excluded from the calculations under this subdivision;

2 (b) If a taxpayer hires at least twenty new employees at the  
3 qualified location or locations before the end of the ramp-up period, the  
4 taxpayer shall be entitled to a credit equal to five percent times the  
5 average wage of new employees times the number of new employees if the  
6 average wage of the new employees equals at least one hundred percent of  
7 the Nebraska statewide average hourly wage for the year of application.  
8 The credit shall equal seven percent times the average wage of new  
9 employees times the number of new employees if the average wage of the  
10 new employees equals at least one hundred fifty percent of the Nebraska  
11 statewide average hourly wage for the year of application. The credit  
12 shall equal nine percent times the average wage of new employees times  
13 the number of new employees if the average wage of the new employees  
14 equals at least two hundred percent of the Nebraska statewide average  
15 hourly wage for the year of application. Wages in excess of one million  
16 dollars paid to any one employee during the year shall be excluded from  
17 the calculations under this subdivision;

18 (c) If a taxpayer attains a cumulative investment in qualified  
19 property of at least five million dollars and hires at least thirty new  
20 employees at the qualified location or locations before the end of the  
21 ramp-up period, the taxpayer shall be entitled to a credit equal to five  
22 percent times the average wage of new employees times the number of new  
23 employees if the average wage of the new employees equals at least one  
24 hundred percent of the Nebraska statewide average hourly wage for the  
25 year of application. The credit shall equal seven percent times the  
26 average wage of new employees times the number of new employees if the  
27 average wage of the new employees equals at least one hundred fifty  
28 percent of the Nebraska statewide average hourly wage for the year of  
29 application. The credit shall equal nine percent times the average wage  
30 of new employees times the number of new employees if the average wage of  
31 the new employees equals at least two hundred percent of the Nebraska

1 statewide average hourly wage for the year of application. Wages in  
2 excess of one million dollars paid to any one employee during the year  
3 shall be excluded from the calculations under this subdivision;

4 (d) If a taxpayer attains a cumulative investment in qualified  
5 property of at least two hundred fifty million dollars and hires at least  
6 two hundred fifty new employees at the qualified location or locations  
7 before the end of the ramp-up period, the taxpayer shall be entitled to a  
8 credit equal to seven percent times the average wage of new employees  
9 times the number of new employees if the average wage of the new  
10 employees equals at least one hundred fifty percent of the Nebraska  
11 statewide average hourly wage for the year of application. The credit  
12 shall equal nine percent times the average wage of new employees times  
13 the number of new employees if the average wage of the new employees  
14 equals at least two hundred percent of the Nebraska statewide average  
15 hourly wage for the year of application. Wages in excess of one million  
16 dollars paid to any one employee during the year shall be excluded from  
17 the calculations under this subdivision; or

18 (e) If a taxpayer attains a cumulative investment in qualified  
19 property of at least two hundred fifty thousand dollars but less than one  
20 million dollars and hires at least five new employees at the qualified  
21 location or locations before the end of the ramp-up period and the number  
22 of new employees and investment are at a qualified location within an  
23 economic redevelopment area, the taxpayer shall be entitled to a credit  
24 equal to six percent times the average wage of new employees times the  
25 number of new employees if the average wage of the new employees equals  
26 at least seventy percent of the Nebraska statewide average hourly wage  
27 for the year of application. Wages in excess of one million dollars paid  
28 to any one employee during the year shall be excluded from the  
29 calculations under this subdivision. For purposes of this subdivision,  
30 economic redevelopment area means an area in which (i) the average rate  
31 of unemployment in the area during the period covered by the most recent

1 federal decennial census or American Community Survey 5-Year Estimate is  
2 at least one hundred fifty percent of the average rate of unemployment in  
3 the state during the same period and (ii) the average poverty rate in the  
4 area exceeds twenty percent for the total federal census tract or tracts  
5 or federal census block group or block groups in the area.

6 (5) The taxpayer shall be entitled to one of the following credits  
7 for new investment:

8 (a)(i) If a taxpayer attains a cumulative investment in qualified  
9 property of at least one million dollars and hires at least ten new  
10 employees at the qualified location or locations before the end of the  
11 ramp-up period, the taxpayer shall be entitled to a credit equal to four  
12 percent of the investment made in qualified property at the qualified  
13 location or locations;

14 (ii) If the taxpayer attains a cumulative investment in qualified  
15 property of at least one million dollars and hires at least ten new  
16 employees at the qualified location or locations before the end of the  
17 ramp-up period and the number of new employees and investment are at a  
18 qualified location in a county in Nebraska with a population of one  
19 hundred thousand or greater, and at which the majority of the business  
20 activities conducted are described in subdivision (1)(a) or (1)(n) of  
21 section 77-6818, the taxpayer shall be entitled to a credit equal to four  
22 percent of the investment made in qualified property at the qualified  
23 location or locations unless the cumulative investment exceeds ten  
24 million dollars, in which case the taxpayer shall be entitled to a credit  
25 equal to seven percent of the investment made in qualified property at  
26 the qualified location or locations; or

27 (iii) If the taxpayer attains a cumulative investment in qualified  
28 property of at least one million dollars and hires at least ten new  
29 employees at the qualified location or locations before the end of the  
30 ramp-up period and the number of new employees and investment are at a  
31 qualified location entirely within a county in Nebraska with a population

1 of less than one hundred thousand, and at which the majority of the  
2 business activities conducted are described in subdivision (1)(a) or (1)  
3 (n) of section 77-6818, the taxpayer shall be entitled to a credit equal  
4 to four percent of the investment made in qualified property at the  
5 qualified location or locations unless the cumulative investment exceeds  
6 ten million dollars, in which case the taxpayer shall be entitled to a  
7 credit equal to seven percent of the investment made in qualified  
8 property at the qualified location or locations. For purposes of meeting  
9 the ten-employee requirement of this subdivision, the number of new  
10 employees shall be multiplied by two;

11 (b) If a taxpayer attains a cumulative investment in qualified  
12 property of at least five million dollars and hires at least thirty new  
13 employees at the qualified location or locations before the end of the  
14 ramp-up period, the taxpayer shall be entitled to a credit equal to seven  
15 percent of the investment made in qualified property at the qualified  
16 location or locations;

17 (c) If a taxpayer attains a cumulative investment in qualified  
18 property of at least two hundred fifty million dollars and hires at least  
19 two hundred fifty new employees at the qualified location or locations  
20 before the end of the ramp-up period, the taxpayer shall be entitled to a  
21 credit equal to seven percent of the investment made in qualified  
22 property at the qualified location or locations; or

23 (d) If a taxpayer attains a cumulative investment in qualified  
24 property of at least two hundred fifty thousand dollars but less than one  
25 million dollars and hires at least five new employees at the qualified  
26 location or locations before the end of the ramp-up period and the number  
27 of new employees and investment are at a qualified location within an  
28 economic redevelopment area, the taxpayer shall be entitled to a credit  
29 equal to four percent of the investment made in qualified property at the  
30 qualified location or locations. For purposes of this subdivision,  
31 economic redevelopment area means an area in which (i) the average rate

1 of unemployment in the area during the period covered by the most recent  
2 federal decennial census or American Community Survey 5-Year Estimate is  
3 at least one hundred fifty percent of the average rate of unemployment in  
4 the state during the same period and (ii) the average poverty rate in the  
5 area exceeds twenty percent for the total federal census tract or tracts  
6 or federal census block group or block groups in the area.

7 (6)(a) The credit percentages prescribed in subdivisions (4)(a),  
8 (b), (c), and (d) and subdivisions (5)(a), (b), and (c) of this section  
9 shall be increased by one percentage point for wages paid and investments  
10 made at qualified locations in an extremely blighted area. For purposes  
11 of this subdivision, extremely blighted area means an area which, before  
12 the end of the ramp-up period, has been declared an extremely blighted  
13 area under section 18-2101.02.

14 (b) The credit percentages prescribed in subsections (4) and (5) of  
15 this section shall be increased by one percentage point if the taxpayer:

16 (i) Is a benefit corporation as defined in section 21-403 and has  
17 been such a corporation for at least one year prior to submitting an  
18 application under the Imagine Nebraska Act; and

19 (ii) Remains a benefit corporation as defined in section 21-403 for  
20 the duration of the taxpayer's agreement under the Imagine Nebraska Act.

21 (c) A taxpayer may, if qualified, receive one or both of the  
22 increases provided in this subsection.

23 (7)(a) The credits prescribed in subsections (4) and (5) of this  
24 section shall be allowable for wages paid and investments made during  
25 each year of the performance period that the taxpayer is at or above the  
26 required levels of employment and investment.

27 (b) The credits prescribed in subsection (5) of this section shall  
28 also be allowable during the first year of the performance period for  
29 investment in qualified property at the qualified location or locations  
30 after the date of the complete application and before the beginning of  
31 the performance period.

1 (8)(a) Property described in subdivision (8)(c) of this section used  
2 at the qualified location or locations, whether purchased or leased, and  
3 placed in service by the taxpayer after the date of the complete  
4 application, shall constitute separate classes of property and are  
5 eligible for exemption under the conditions and for the time periods  
6 provided in subdivision (8)(b) of this section.

7 (b) A taxpayer shall receive the exemption of property in  
8 subdivision (8)(c) of this section if the taxpayer attains one of the  
9 following employment and investment levels: (i) Cumulative investment in  
10 qualified property of at least five million dollars and the hiring of at  
11 least thirty new employees at the qualified location or locations before  
12 the end of the ramp-up period; (ii) cumulative investment in qualified  
13 property of at least fifty million dollars at the qualified location or  
14 locations before the end of the ramp-up period, provided the average  
15 compensation of the taxpayer's employees at the qualified location or  
16 locations for the year in which such investment level was attained equals  
17 at least one hundred fifty percent of the Nebraska statewide average  
18 hourly wage for the year of application and the taxpayer offers to its  
19 employees who constitute full-time employees as defined and described in  
20 section 4980H of the Internal Revenue Code of 1986, as amended, and the  
21 regulations for such section, at the qualified location or locations for  
22 the year in which such investment level was attained, the opportunity to  
23 enroll in minimum essential coverage under an eligible employer-sponsored  
24 plan, as those terms are defined and described in section 5000A of the  
25 Internal Revenue Code of 1986, as amended, and the regulations for such  
26 section; or (iii) cumulative investment in qualified property of at least  
27 two hundred fifty million dollars and the hiring of at least two hundred  
28 fifty new employees at the qualified location or locations before the end  
29 of the ramp-up period. Such property shall be eligible for the exemption  
30 from the first January 1 following the end of the year during which the  
31 required levels were exceeded through the ninth December 31 after the

1 first year property included in subdivision (8)(c) of this section  
2 qualifies for the exemption, except that for a taxpayer who has filed an  
3 application under NAICS code 518210 for Data Processing, Hosting, and  
4 Related Services and who files a separate sequential application for the  
5 same NAICS code for which the ramp-up period begins with the year  
6 immediately after the end of the previous project's performance period or  
7 a taxpayer who has a project qualifying under subdivision (1)(b)(ii) of  
8 section 77-5725 and who files a separate sequential application for NAICS  
9 code 518210 for Data Processing, Hosting, and Related Services for which  
10 the ramp-up period begins with the year immediately after the end of the  
11 previous project's entitlement period, such property described in  
12 subdivision (8)(c)(i) of this section shall be eligible for the exemption  
13 from the first January 1 following the placement in service of such  
14 property through the ninth December 31 after the year the first claim for  
15 exemption is approved.

16 (c) The following personal property used at the qualified location  
17 or locations, whether purchased or leased, and placed in service by the  
18 taxpayer after the date of the complete application shall constitute  
19 separate classes of personal property:

20 (i) All personal property that constitutes a data center if the  
21 taxpayer qualifies under subdivision (8)(b)(i) or (8)(b)(ii) of this  
22 section;

23 (ii) Business equipment that is located at a qualified location or  
24 locations and that is involved directly in the manufacture or processing  
25 of agricultural products if the taxpayer qualifies under subdivision (8)  
26 (b)(i) or (8)(b)(ii) of this section; or

27 (iii) All personal property if the taxpayer qualifies under  
28 subdivision (8)(b)(iii) of this section.

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

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

12 (9) The taxpayer shall, on or before the receipt or use of any  
13 incentives under this section, pay to the director a fee of one-half  
14 percent of such incentives, except for the exemption on personal  
15 property, for administering the Imagine Nebraska Act, except that the fee  
16 on any sales tax exemption may be paid by the taxpayer with the filing of  
17 its sales and use tax return. Such fee may be paid by direct payment to  
18 the director or through withholding of available refunds. A credit shall  
19 be allowed against such fee for the amount of the fee paid with the  
20 application. All fees collected under this subsection shall be remitted  
21 to the State Treasurer for credit to the Imagine Nebraska Cash Fund,  
22 which fund is hereby created. The fund shall consist of fees credited  
23 under this subsection and any other money appropriated to the fund by the  
24 Legislature. The fund shall be administered by the Department of Economic  
25 Development and shall be used for administration of the Imagine Nebraska  
26 Act. Any money in the fund available for investment shall be invested by  
27 the state investment officer pursuant to the Nebraska Capital Expansion  
28 Act and the Nebraska State Funds Investment Act.

29 Sec. 21. Section 77-6832, Revised Statutes Cumulative Supplement,  
30 2020, is amended to read:

31 77-6832 (1)(a) The credits prescribed in section 77-6831 for a year



1 shall be established by filing the forms required by the Tax Commissioner  
2 with the income tax return for the taxable year which includes the end of  
3 the year the credits were earned. The credits may be used and shall be  
4 applied in the order in which they were first allowable under the Imagine  
5 Nebraska Act. To the extent the taxpayer has credits under the Nebraska  
6 Advantage Act or the Employment and Investment Growth Act still available  
7 for use in a year or years which overlap the performance period or  
8 carryover period of the Imagine Nebraska Act, the credits may be used and  
9 shall be applied in the order in which they were first allowable, and  
10 when there are credits of the same age, the older tax incentive program's  
11 credits shall be applied first. The credits may be used after any other  
12 nonrefundable credits to reduce the taxpayer's income tax liability  
13 imposed by sections 77-2714 to 77-27,135. Credits may be used beginning  
14 with the taxable year which includes December 31 of the year the required  
15 minimum levels were reached. The last year for which credits may be used  
16 is the taxable year which includes December 31 of the last year of the  
17 carryover period. Any decision on how part of the credit is applied shall  
18 not limit how the remaining credit could be applied under this section.

19 (b) The taxpayer may use the credit provided in subsection (4) of  
20 section 77-6831 (i) to reduce the taxpayer's income tax withholding  
21 employer or payor tax liability under section 77-2756 or 77-2757, ~~or to~~  
22 ~~reduce a qualified employee leasing company's income tax withholding~~  
23 ~~employer or payor tax liability under such sections, when the taxpayer is~~  
24 ~~the client-lessee of such company,~~ to the extent such liability is  
25 attributable to the number of new employees employed at the qualified  
26 location or locations, excluding any wages in excess of one million  
27 dollars paid to any one employee during the year or (ii) to reduce a  
28 qualified employee leasing company's income tax withholding employer or  
29 payor tax liability under section 77-2756 or 77-2757, when the taxpayer  
30 is the client-lessee of such company, to the extent such liability is  
31 attributable to the number of new employees performing services for such

1 client-lessee at the qualified location or locations, excluding any wages  
2 in excess of one million dollars paid to any one employee during the  
3 year. To the extent of the credit used, such withholding shall not  
4 constitute public funds or state tax revenue and shall not constitute a  
5 trust fund or be owned by the state. The use by the taxpayer or the  
6 qualified employee leasing company of the credit shall not change the  
7 amount that otherwise would be reported by the taxpayer, or such  
8 qualified employee leasing company, to the employee under section 77-2754  
9 as income tax withheld and shall not reduce the amount that otherwise  
10 would be allowed by the state as a refundable credit on an employee's  
11 income tax return as income tax withheld under section 77-2755. The  
12 amount of credits used against income tax withholding shall not exceed  
13 the withholding attributable to the number of new employees employed at  
14 the qualified location or locations or, for a qualified employee leasing  
15 company, the number of new employees performing services for the  
16 applicable client-lessee at the qualified location or locations,  
17 excluding any wages in excess of one million dollars paid to any one  
18 employee during the year. If the amount of credit used by the taxpayer or  
19 the qualified employee leasing company against income tax withholding  
20 exceeds such amount, the excess withholding shall be returned to the  
21 Department of Revenue in the manner provided in section 77-2756, such  
22 excess amount returned shall be considered unused, and the amount of  
23 unused credits may be used as otherwise permitted in this section or  
24 shall carry over to the extent authorized in subdivision (1)(g) of this  
25 section.

26 (c) Credits may be used to obtain a refund of sales and use taxes  
27 under the Local Option Revenue Act, the Nebraska Revenue Act of 1967, the  
28 Qualified Judgment Payment Act, and sections 13-319, 13-324, and 13-2813  
29 that are not subject to direct refund under section 77-6831 and that are  
30 paid on purchases, including rentals, for use at a qualified location.

31 (d) The credits provided in subsections (4) and (5) of section

1 77-6831 may be used to repay a loan for job training or infrastructure  
2 development as provided in section 77-6841.

3 (e) Credits may be used to obtain a payment from the state equal to  
4 the amount which the taxpayer demonstrates to the director was paid by  
5 the taxpayer after the date of the complete application for job training  
6 and talent recruitment of employees who qualify in the number of new  
7 employees, to the extent that proceeds from a loan described in section  
8 77-6841 were not used to make such payments. For purposes of this  
9 subdivision:

10 (i) Job training means training for a prospective or new employee  
11 that is provided after the date of the complete application by a Nebraska  
12 nonprofit college or university, a Nebraska public or private secondary  
13 school, a Nebraska educational service unit, or a company that is not a  
14 member of the taxpayer's unitary group or a related person to the  
15 taxpayer; and

16 (ii) Talent recruitment means talent recruitment activities that  
17 result in a newly recruited employee who is hired by the taxpayer after  
18 the date of the complete application and who is paid compensation during  
19 the year of hire at a rate equal to at least one hundred percent of the  
20 Nebraska statewide average hourly wage for the year of application,  
21 including marketing, relocation expenses, and search-firm fees. Talent  
22 recruitment payments that may be reimbursed include, without limitation,  
23 payment by the taxpayer, without repayment by the employee, of an  
24 employee's student loans, an employee's tuition, and an employee's  
25 downpayment on a primary residence in Nebraska. Talent recruitment  
26 payments that may be reimbursed shall not include payments for the  
27 recruitment of a person who constitutes a related person to the taxpayer  
28 when the taxpayer is an individual or recruitment of a person who  
29 constitutes a related person to an owner of the taxpayer when the  
30 taxpayer is a partnership, a limited liability company, or a subchapter S  
31 corporation.

1 (f) The credits provided in subsections (4) and (5) of section  
2 77-6831 may be used to obtain a payment from the state equal to the  
3 amount which the taxpayer demonstrates to the director was paid for  
4 taxpayer-sponsored child care at the qualified location or locations  
5 during the performance period and the carryover period.

6 (g) Credits may be carried over until fully utilized through the end  
7 of the carryover period.

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

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

14 (c) Refund claims for materials purchased by a purchasing agent  
15 shall include:

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

17 (ii) The contract price; and

18 (iii)(A) For refunds under subdivision (2)(a)(iii) or (2)(a)(v) of  
19 section 77-6831, a certification by the contractor or repairperson of the  
20 percentage of the materials incorporated into or annexed to the qualified  
21 location on which sales and use taxes were paid to Nebraska after  
22 appointment as purchasing agent; or

23 (B) For refunds under subdivision (2)(a)(iv) of section 77-6831, a  
24 certification by the contractor or repairperson of the percentage of the  
25 contract price that represents the cost of materials annexed to the  
26 qualified location and the percentage of the materials annexed to the  
27 qualified location on which sales and use taxes were paid to Nebraska  
28 after appointment as purchasing agent.

29 (d) All refund claims shall be filed, processed, and allowed as any  
30 other claim under section 77-2708, except that the amounts allowed to be  
31 refunded under the Imagine Nebraska Act shall be deemed to be

1 overpayments and shall be refunded notwithstanding any limitation in  
2 subdivision (2)(a) of section 77-2708. The refund may be allowed if the  
3 claim is filed within three years from the end of the year the required  
4 levels of employment and investment are met or within the period set  
5 forth in section 77-2708. Refunds shall be paid by the Tax Commissioner  
6 within one hundred eighty days after receipt of the refund claim. Such  
7 payments shall be subject to later recovery by the Tax Commissioner upon  
8 audit.

9 (e) If a claim for a refund of sales and use taxes under the Local  
10 Option Revenue Act, the Qualified Judgment Payment Act, or sections  
11 13-319, 13-324, and 13-2813 of more than twenty-five thousand dollars is  
12 filed by June 15 of a given year, the refund shall be made on or after  
13 November 15 of the same year. If such a claim is filed on or after June  
14 16 of a given year, the refund shall not be made until on or after  
15 November 15 of the following year. The Tax Commissioner shall notify the  
16 affected city, village, county, or municipal county of the amount of  
17 refund claims of sales and use taxes under the Local Option Revenue Act,  
18 the Qualified Judgment Payment Act, or sections 13-319, 13-324, and  
19 13-2813 that are in excess of twenty-five thousand dollars on or before  
20 July 1 of the year before the claims will be paid under this section.

21 (f) For refunds of sales and use taxes under the Local Option  
22 Revenue Act, the deductions made by the Tax Commissioner for such refunds  
23 shall be delayed in accordance with section 77-27,144.

24 (g) Interest shall not be allowed on any taxes refunded under the  
25 Imagine Nebraska Act.

26 (3) The appointment of purchasing agents shall be recognized for the  
27 purpose of changing the status of a contractor or repairperson as the  
28 ultimate consumer of tangible personal property purchased after the date  
29 of the appointment which is physically incorporated into or annexed at a  
30 qualified location and becomes the property of the owner of the  
31 improvement to real estate or the taxpayer. The purchasing agent shall be

1 jointly liable for the payment of the sales and use tax on the purchases  
2 with the owner of the property.

3 (4) The determination of whether the application is complete,  
4 whether a location is a qualified location, and whether to approve the  
5 application and sign the agreement shall be made by the director. All  
6 other interpretations of the Imagine Nebraska Act shall be made by the  
7 Tax Commissioner. The Commissioner of Labor shall provide the director  
8 with such information as the Department of Labor regularly receives with  
9 respect to the taxpayer which the director requests from the Commissioner  
10 of Labor in order to fulfill the director's duties under the act. The  
11 director shall use such information to achieve efficiency in the  
12 administration of the act.

13 (5) Once the director and the taxpayer have signed the agreement  
14 under section 77-6828, the taxpayer, and its owners or members where  
15 applicable, may report and claim and shall receive all incentives allowed  
16 by the Imagine Nebraska Act, subject to the base authority limitations  
17 provided in section 77-6839, without waiting for a determination by the  
18 director or the Tax Commissioner or other taxing authority that the  
19 taxpayer has met the required employment and investment levels or  
20 otherwise qualifies, has qualified, or continues to qualify for such  
21 incentives, provided that the tax return or claim has been signed by an  
22 owner, member, manager, or officer of the taxpayer who declares under  
23 penalties of perjury that he or she has examined the tax return or claim,  
24 including accompanying schedules and statements, and to the best of his  
25 or her knowledge and belief (a) the tax return or claim is correct and  
26 complete in all material respects, (b) payment of the claim has not been  
27 previously made by the state to the taxpayer, and (c) with respect to  
28 sales or use tax refund claims, the taxpayer has not claimed or received  
29 a refund of such tax from a retailer. The payment or allowance of such a  
30 claim shall not prevent the director or the Tax Commissioner or other  
31 taxing authority from recovering such payment, exemption, or allowance,

1 within the normal period provided by law, subject to normal appeal rights  
2 of a taxpayer, if the director or Tax Commissioner or other taxing  
3 authority determines upon review or audit that the taxpayer did not  
4 qualify for such incentive or exemption.

5 (6) An audit of employment and investment thresholds and incentive  
6 amounts shall be made by the Tax Commissioner to the extent and in the  
7 manner determined by the Tax Commissioner. Upon request by the director  
8 or the Tax Commissioner, the Commissioner of Labor shall report to the  
9 director and the Tax Commissioner the employment data regularly reported  
10 to the Department of Labor relating to number of employees and wages paid  
11 for each taxpayer. The director and Tax Commissioner, to the extent they  
12 determine appropriate, shall use such information to achieve efficiency  
13 in the administration of the Imagine Nebraska Act. The Tax Commissioner  
14 may recover any refund or part thereof which is erroneously made and any  
15 credit or part thereof which is erroneously allowed by issuing a  
16 deficiency determination within three years from the date of refund or  
17 credit or within the period otherwise allowed for issuing a deficiency  
18 determination, whichever expires later. The director shall not enter into  
19 an agreement with any taxpayer unless the taxpayer agrees to  
20 electronically verify the work eligibility status of all newly hired  
21 employees employed in Nebraska within ninety days after the date of hire.  
22 For purposes of calculating any tax incentive under the act, the hours  
23 worked and compensation paid to an employee who has not been  
24 electronically verified or who is not eligible to work in Nebraska shall  
25 be excluded.

26 (7) A determination by the director that a location is not a  
27 qualified location or a determination by the Tax Commissioner that a  
28 taxpayer has failed to meet or maintain the required levels of employment  
29 or investment for incentives, exemptions, or recapture, or does not  
30 otherwise qualify for incentives or exemptions, may be protested by the  
31 taxpayer to the Tax Commissioner within sixty days after the mailing to

1 the taxpayer of the written notice of the proposed determination by the  
2 director or the Tax Commissioner, as applicable. If the notice of  
3 proposed determination is not protested in writing by the taxpayer within  
4 the sixty-day period, the proposed determination is a final  
5 determination. If the notice is protested, the Tax Commissioner, after a  
6 formal hearing by the Tax Commissioner or by an independent hearing  
7 officer appointed by the Tax Commissioner, if requested by the taxpayer  
8 in such protest, shall issue a written order resolving such protest. The  
9 written order of the Tax Commissioner resolving a protest may be appealed  
10 to the district court of Lancaster County in accordance with the  
11 Administrative Procedure Act within thirty days after the issuance of the  
12 order.

13 Sec. 22. Section 77-6837, Revised Statutes Cumulative Supplement,  
14 2020, is amended to read:

15 77-6837 (1) Beginning in 2021, the director and the Tax Commissioner  
16 shall jointly submit electronically an annual report for the previous  
17 fiscal year to the Legislature no later than October 31 of each year. The  
18 report shall be on a fiscal year, accrual basis that satisfies the  
19 requirements set by the Governmental Accounting Standards Board. The  
20 Department of Economic Development and the Department of Revenue shall  
21 together, on or before December 15 of each even-numbered year, appear at  
22 a joint hearing of the Appropriations Committee of the Legislature and  
23 the Revenue Committee of the Legislature and present the report. Any  
24 supplemental information requested by three or more committee members  
25 shall be presented within thirty days after the request.

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

30 (3) The report shall also state, for taxpayers who are parties to  
31 agreements, by industry group (a) the specific incentive options applied



1 for under the Imagine Nebraska Act, (b) the refunds and reductions in tax  
2 allowed on the investment, (c) the credits earned, (d) the credits used  
3 to reduce the corporate income tax and the credits used to reduce the  
4 individual income tax, (e) the credits used to obtain sales and use tax  
5 refunds, (f) the credits used against withholding liability, (g) the  
6 credits used for job training, (h) the credits used for infrastructure  
7 development, (i) the number of jobs created under the act, (j) the  
8 expansion of capital investment, (k) the estimated wage levels of jobs  
9 created under the act subsequent to the application date, (l) the total  
10 number of qualified applicants, (m) the projected future state revenue  
11 gains and losses, (n) the sales tax refunds owed, (o) the credits  
12 outstanding under the act, (p) the value of personal property exempted by  
13 class in each county under the act, (q) the total amount of the payments,  
14 (r) the amount of workforce training and infrastructure development loans  
15 issued, outstanding, repaid, and delinquent, and (s) the value of health  
16 coverage provided to employees at qualified locations during the year who  
17 are not base-year employees and who are paid the required compensation.  
18 The report shall include the estimate of the amount of sales and use tax  
19 refunds to be paid and tax credits to be used as were required for the  
20 October forecast under section 77-6839.

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

28 (5) The report shall provide an explanation of the audit and review  
29 processes of the Department of Economic Development and the Department of  
30 Revenue, as applicable, in approving and rejecting applications or the  
31 grant of incentives and in enforcing incentive recapture. The report

1 shall also specify the median period of time between the date of  
2 application and the date the agreement is executed for all agreements  
3 executed by June 30 of the current ~~December 31 of the prior~~ year.

4 (6) The report shall provide information on agreement-specific total  
5 incentives used every two years for each agreement. The report shall  
6 disclose (a) the identity of the taxpayer, (b) the qualified location or  
7 locations, and (c) the total credits used and refunds approved during the  
8 immediately preceding two years expressed as a single, aggregated total.  
9 The incentive information required to be reported under this subsection  
10 shall not be reported for the first year the taxpayer attains the  
11 required employment and investment thresholds. The information on first-  
12 year incentives used shall be combined with and reported as part of the  
13 second year. Thereafter, the information on incentives used for  
14 succeeding years shall be reported for each agreement every two years  
15 containing information on two years of credits used and refunds approved.  
16 The incentives used shall include incentives which have been approved by  
17 the director or Tax Commissioner, as applicable, but not necessarily  
18 received, during the previous two years.

19 (7) The report shall include an executive summary which shows  
20 aggregate information for all agreements for which the information on  
21 incentives used in subsection (6) of this section is reported as follows:  
22 (a) The total incentives used by all taxpayers for agreements detailed in  
23 subsection (6) of this section during the previous two years; (b) the  
24 number of agreements; (c) the new jobs at the qualified location or  
25 locations for which credits have been granted; (d) the average  
26 compensation paid to employees in the state in the year of application  
27 and for the new jobs at the qualified location or locations; and (e) the  
28 total investment for which incentives were granted. The executive summary  
29 shall summarize the number of states which grant investment tax credits,  
30 job tax credits, sales and use tax refunds for qualified investment, and  
31 personal property tax exemptions and the investment and employment

1 requirements under which they may be granted.

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

5 Sec. 23. Section 77-6839, Revised Statutes Cumulative Supplement,  
6 2020, is amended to read:

7 77-6839 (1) The Department of Economic Development and the  
8 Department of Revenue shall jointly, on or before the fifteenth day of  
9 October and February of every year and the fifteenth day of April in odd-  
10 numbered years, make an estimate of the amount of sales and use tax  
11 refunds to be paid and tax credits to be used under the Imagine Nebraska  
12 Act during the fiscal years to be forecast under section 77-27,158. The  
13 estimate shall be based on the most recent data available, including  
14 pending and approved applications and updates thereof as are required by  
15 subdivision (1)(f) of section 77-6828. The estimate shall be forwarded to  
16 the Legislative Fiscal Analyst and the Nebraska Economic Forecasting  
17 Advisory Board and made a part of the advisory forecast required by  
18 section 77-27,158.

19 (2)(a) In addition to the estimates required under subsection (1) of  
20 this section, the Department of Economic Development shall, on or before  
21 the fifteenth day of October and February of every year, make an estimate  
22 of the amount of sales and use tax refunds to be paid and tax credits to  
23 be used under the Imagine Nebraska Act for each of the upcoming three  
24 calendar years and shall report such estimate to the Governor. The  
25 estimate shall be based on the most recent data available, including  
26 pending and approved applications and updates thereof as are required by  
27 subdivision (1)(f) of section 77-6828. If the estimate for any such  
28 calendar year exceeds the base authority:

29 (i) The Department of Economic Development shall prepare an analysis  
30 explaining why the estimate exceeds the base authority. The department  
31 shall include such analysis in the report it submits to the Governor

1 under this subsection; and

2 (ii) The director shall not approve any additional applications  
3 under the Imagine Nebraska Act that would include refunds or credits in  
4 the calendar year in which the base authority is projected to be  
5 exceeded. Applications shall be considered in the order in which they are  
6 received. Any applications that are not approved because the base  
7 authority has been exceeded shall be placed on a wait list in the order  
8 in which they were received and shall be given first priority once  
9 applications may again be approved. Applications on the wait list retain  
10 the same application date and base year as if they had been approved  
11 within the time set forth in section 77-6827.

12 (b) For purposes of this section, base authority means the total  
13 amount of refunds and credits that may be approved in any calendar year.  
14 Notwithstanding any other provision of the Imagine Nebraska Act to the  
15 contrary, no refunds may be paid and no credits may be used in any  
16 calendar year in excess of the base authority for such calendar year. The  
17 base authority shall be equal to twenty-five million dollars for calendar  
18 years 2021 and 2022, one hundred million dollars for calendar years 2023  
19 and 2024, and one hundred fifty million dollars for calendar year 2025.  
20 Beginning with calendar year 2026 and every three years thereafter, the  
21 director shall adjust the base authority to an amount equal to three  
22 percent of the actual General Fund net receipts for the most recent  
23 fiscal year for which such information is available. Any amount of base  
24 authority that is unused in a calendar year shall carry forward to the  
25 following calendar year and shall be added to the limit applicable to  
26 such following calendar year, except that in no case shall the base  
27 authority for any calendar year prior to 2026 exceed four hundred million  
28 dollars.

29 Sec. 24. Sections 2, 3, 7, 8, 9, 10, 11, 13, and 27 of this act  
30 become operative on January 1, 2023. Sections 16, 18, 19, and 26 of this  
31 act become operative three calendar months after the adjournment of this

1 legislative session. The other sections of this act become operative on  
2 their effective date.

3 Sec. 25. Original sections 77-376, 77-27,195, 77-4110, 77-4933,  
4 77-5731, and 77-5807, Reissue Revised Statutes of Nebraska, sections  
5 77-6811, 77-6831, 77-6832, 77-6837, and 77-6839, Revised Statutes  
6 Cumulative Supplement, 2020, and section 77-5907, Revised Statutes  
7 Supplement, 2021, are repealed.

8 Sec. 26. Original sections 77-6805, 77-6815, and 77-6828, Revised  
9 Statutes Cumulative Supplement, 2020, are repealed.

10 Sec. 27. Original sections 77-5705, 77-5723, 77-5727, and 77-5735,  
11 Reissue Revised Statutes of Nebraska, sections 77-2708, 77-5725, and  
12 77-5726, Revised Statutes Cumulative Supplement, 2020, and section  
13 77-27,144, Revised Statutes Supplement, 2021, are repealed.

14 Sec. 28. Since an emergency exists, this act takes effect when  
15 passed and approved according to law.

16 2. On page 1, strike beginning with "the" in line 1 through line 4  
17 and insert "revenue and taxation; to amend sections 77-376, 77-27,195,  
18 77-4110, 77-4933, 77-5705, 77-5723, 77-5727, 77-5731, 77-5735, and  
19 77-5807, Reissue Revised Statutes of Nebraska, sections 77-2708, 77-5725,  
20 77-5726, 77-6805, 77-6811, 77-6815, 77-6828, 77-6831, 77-6832, 77-6837,  
21 and 77-6839, Revised Statutes Cumulative Supplement, 2020, and sections  
22 77-27,144 and 77-5907, Revised Statutes Supplement, 2021; to change  
23 provisions relating to examination of financial records, sales and use  
24 tax refund deductions, certain reporting requirements, the Nebraska  
25 Advantage Act, and the Imagine Nebraska Act; to redefine terms; to  
26 harmonize provisions; to provide operative dates; to repeal the original  
27 sections; and to declare an emergency."