

LEGISLATURE OF NEBRASKA
ONE HUNDRED SEVENTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 502

Introduced by Flood, 19.

Read first time January 19, 2021

Committee: Revenue

1 A BILL FOR AN ACT relating to the Nebraska Advantage Act; to amend
2 sections 77-5705, 77-5723, 77-5727, 77-5731, and 77-5735, Reissue
3 Revised Statutes of Nebraska, and sections 77-5725 and 77-5726,
4 Revised Statutes Cumulative Supplement, 2020; to redefine a term; to
5 change provisions relating to sales tax incentives; to harmonize
6 provisions; to provide for applicability; and to repeal the original
7 sections.
8 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 77-5705, Reissue Revised Statutes of Nebraska, is
2 amended to read:

3 77-5705 Except for a tier 5 project that is sequential to a tier 2
4 large data center project, base year means the year immediately preceding
5 the year of application. For a tier 5 project that is sequential to a
6 tier 2 large data center project, the base year means the last year of
7 the tier 2 large data center project entitlement period relating to
8 ~~direct sales tax exemptions refunds~~.

9 Sec. 2. Section 77-5723, Reissue Revised Statutes of Nebraska, is
10 amended to read:

11 77-5723 (1) In order to utilize the incentives set forth in the
12 Nebraska Advantage Act, the taxpayer shall file an application, on a form
13 developed by the Tax Commissioner, requesting an agreement with the Tax
14 Commissioner.

15 (2) The application shall contain:

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

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

20 (c) If more than one location within this state is involved,
21 sufficient documentation to show that the employment and investment at
22 different locations are interdependent parts of the plan. A headquarters
23 shall be presumed to be interdependent with each other location directly
24 controlled by such headquarters. A showing that the parts of the plan
25 would be considered parts of a unitary business for corporate income tax
26 purposes shall not be sufficient to show interdependence for the purposes
27 of this subdivision;

28 (d) A nonrefundable application fee of one thousand dollars for a
29 tier 1 project, two thousand five hundred dollars for a tier 2, tier 3,
30 or tier 5 project, five thousand dollars for a tier 4 project, and ten
31 thousand dollars for a tier 6 project. The fee shall be credited to the

1 Nebraska Incentives Fund; and

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

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

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

15 (4) Once satisfied that the plan in the application defines a
16 project consistent with the purposes stated in the Nebraska Advantage Act
17 in one or more qualified business activities within this state, that the
18 taxpayer and the plan will qualify for benefits under the act, and that
19 the required levels of employment and investment for the project will be
20 met prior to the end of the fourth year after the year in which the
21 application was submitted for a tier 1, tier 3, or tier 6 project or the
22 end of the sixth year after the year in which the application was
23 submitted for a tier 2, tier 4, or tier 5 project, the Tax Commissioner
24 shall approve the application. For a tier 5 project that is sequential to
25 a tier 2 large data center project, the required level of investment
26 shall be met prior to the end of the fourth year after the expiration of
27 the tier 2 large data center project entitlement period relating to
28 direct sales tax exemptions refunds.

29 (5) The Tax Commissioner shall make his or her determination to
30 approve or not approve an application within one hundred eighty days
31 after the date of the application. If the Tax Commissioner requests, by

1 mail or by electronic means, additional information or clarification from
2 the taxpayer in order to make his or her determination, such one-hundred-
3 eighty-day period shall be tolled from the time the Tax Commissioner
4 makes the request to the time he or she receives the requested
5 information or clarification from the taxpayer. The taxpayer and the Tax
6 Commissioner may also agree to extend the one-hundred-eighty-day period.
7 If the Tax Commissioner fails to make his or her determination within the
8 prescribed one-hundred-eighty-day period, the application shall be deemed
9 approved.

10 (6) Within one hundred eighty days after approval of the
11 application, the Tax Commissioner shall prepare and mail a written
12 agreement to the taxpayer for the taxpayer's signature. The taxpayer and
13 the Tax Commissioner shall enter into a written agreement. The taxpayer
14 shall agree to complete the project, and the Tax Commissioner, on behalf
15 of the State of Nebraska, shall designate the approved plan of the
16 taxpayer as a project and, in consideration of the taxpayer's agreement,
17 agree to allow the taxpayer to use the incentives contained in the
18 Nebraska Advantage Act. The application, and all supporting
19 documentation, to the extent approved, shall be considered a part of the
20 agreement. The agreement shall state:

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

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

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

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

28 (e) A requirement that the company update the Department of Revenue
29 annually on any changes in plans or circumstances which affect the
30 timetable of sales tax refunds as set out in the application. If the
31 company fails to comply with this requirement, the Tax Commissioner may

1 defer any pending sales tax refunds until the company does comply.

2 (7) The incentives contained in section 77-5725 shall be in lieu of
3 the tax credits allowed by the Nebraska Advantage Rural Development Act
4 for any project. In computing credits under the act, any investment or
5 employment which is eligible for benefits or used in determining benefits
6 under the Nebraska Advantage Act shall be subtracted from the increases
7 computed for determining the credits under section 77-27,188. New
8 investment or employment at a project location that results in the
9 meeting or maintenance of the employment or investment requirements, the
10 creation of credits, or refunds of taxes under the Employment and
11 Investment Growth Act shall not be considered new investment or
12 employment for purposes of the Nebraska Advantage Act. The use of
13 carryover credits under the Employment and Investment Growth Act, the
14 Invest Nebraska Act, the Nebraska Advantage Rural Development Act, or the
15 Quality Jobs Act shall not preclude investment and employment from being
16 considered new investment or employment under the Nebraska Advantage Act.
17 The use of property tax exemptions at the project under the Employment
18 and Investment Growth Act shall not preclude investment not eligible for
19 the property tax exemption from being considered new investment under the
20 Nebraska Advantage Act.

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

30 (9) The taxpayer may request that an agreement be modified if the
31 modification is consistent with the purposes of the act and does not

1 require a change in the description of the project. An agreement may not
2 be modified to a tier that would grant a higher level of benefits to the
3 taxpayer or to a tier 1 project. Once satisfied that the modification to
4 the agreement is consistent with the purposes stated in the act, the Tax
5 Commissioner and taxpayer may amend the agreement. For a tier 6 project,
6 the taxpayer must agree to limit the project to qualified activities
7 allowable under tier 2 and tier 4.

8 Sec. 3. Section 77-5725, Revised Statutes Cumulative Supplement,
9 2020, is amended to read:

10 77-5725 (1) Applicants may qualify for benefits under the Nebraska
11 Advantage Act in one of six tiers:

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

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

1 before such date shall continue in full force and effect;

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

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

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

4 (f) Tier 6, investment in qualified property of at least ten million
5 dollars and the hiring of at least seventy-five new employees or the
6 investment in qualified property of at least one hundred million dollars
7 and the hiring of at least fifty 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 (2) When the taxpayer has met the required levels of employment and
16 investment contained in the agreement for a tier 1, tier 2, tier 4, tier
17 5, or tier 6 project, the taxpayer shall be entitled to the following
18 incentives:

19 (a) A refund of all sales and use taxes for a tier 2, tier 4, tier
20 5, or tier 6 project or a refund of one-half of all sales and use taxes
21 for a tier 1 project paid under the Local Option Revenue Act, the
22 Nebraska Revenue Act of 1967, and sections 13-319, 13-324, 13-2813, and
23 77-6403 from the date of the application through the meeting of the
24 required levels of employment and investment for all purchases, including
25 rentals, of:

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

31 (iii) Tangible personal property by a contractor or repairperson

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

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

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

18 (b)(i) (b) A refund of all sales and use taxes for a tier 2, tier 4,
19 tier 5, or tier 6 project or a refund of one-half of all sales and use
20 taxes for a tier 1 project paid under the Local Option Revenue Act, the
21 Nebraska Revenue Act of 1967, and sections 13-319, 13-324, 13-2813, and
22 77-6403 on the types of purchases, including rentals, listed in
23 subdivision (a) of this subsection for such taxes paid during each year
24 of the entitlement period in which the taxpayer is at or above the
25 required levels of employment and investment; or -

26 (ii) An exemption from all sales and use taxes for a tier 2, tier 4,
27 tier 5, or tier 6 project imposed under the Local Option Revenue Act, the
28 Nebraska Revenue Act of 1967, and sections 13-319, 13-324, 13-2813, and
29 77-6403 on the types of purchases, including rentals, listed in
30 subdivision (a) of this subsection for such purchases, including rentals,
31 occurring during each year of the entitlement period in which the

1 taxpayer is at or above the required levels of employment and investment,
2 except that the exemption shall be for the actual materials purchased
3 with respect to subdivisions (2)(a)(iii), (iv), and (v) of this section.
4 The Tax Commissioner shall issue such rules, regulations, certificates,
5 and forms as are appropriate to implement the efficient use of this
6 exemption.

7 (3) For agreements involving a tier 2, tier 4, tier 5, or tier 6
8 project:

9 (a) Upon execution of the agreement or, for any taxpayer whose
10 agreement was executed prior to the effective date of this act, within
11 sixty days after the effective date of this act, the taxpayer shall be
12 issued a direct payment permit under section 77-2705.01, notwithstanding
13 the three million dollars in purchases limitation in subsection (1) of
14 section 77-2705.01, unless the taxpayer has opted out of this
15 requirement. For any taxpayer who is issued a direct payment permit,
16 until such taxpayer meets the required levels of employment and
17 investment contained in the agreement, the taxpayer must pay and remit
18 any applicable sales and use taxes as required by the Tax Commissioner.

19 (b) If the taxpayer meets the required levels of employment and
20 investment contained in the agreement, the taxpayer shall receive the
21 sales tax refunds described in subdivision (2)(a) of this section. For
22 any year in which the taxpayer is not at the required levels of
23 employment and investment, the taxpayer shall report all sales and use
24 taxes owed for the period on the taxpayer's income tax return for the
25 year.

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

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

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

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

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

27 (5) (4) Any taxpayer who qualifies for a tier 6 project shall be
28 entitled to a credit equal to ten percent times the total compensation
29 paid to all employees, other than base-year employees, excluding any
30 compensation in excess of one million dollars paid to any one employee
31 during the year, employed at the project.

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

10 (7) ~~(6)~~ The credits prescribed in subsections (4) ~~(3)~~, (5) ~~(4)~~, and
11 (6) ~~(5)~~ of this section shall be allowable for compensation paid and
12 investments made during each year of the entitlement period that the
13 taxpayer is at or above the required levels of employment and investment.

14 (8) ~~(7)~~ The credit prescribed in subsection (6) ~~(5)~~ of this section
15 shall also be allowable during the first year of the entitlement period
16 for investment in qualified property at the project after the date of the
17 application and before the required levels of employment and investment
18 were met.

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

26 (b)(i) A taxpayer who has met the required levels of employment and
27 investment for a tier 4 project shall receive the exemption of property
28 in subdivisions (9)(c)(ii) ~~(8)(c)(ii)~~, (iii), and (iv) of this section. A
29 taxpayer who has met the required levels of employment and investment for
30 a tier 6 project shall receive the exemption of property in subdivisions
31 (9)(c)(ii) ~~(8)(c)(ii)~~, (iii), (iv), and (v) of this section. Such

1 property shall be eligible for the exemption from the first January 1
2 following the end of the year during which the required levels were
3 exceeded through the ninth December 31 after the first year property
4 included in subdivisions (9)(c)(ii) (8)(c)(ii), (iii), (iv), and (v) of
5 this section qualifies for the exemption.

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

13 (iii) A taxpayer who has filed an application that describes a tier
14 2 large data center project or a tier 5 project that is sequential to a
15 tier 2 large data center project for which the entitlement period has
16 expired shall receive the exemption of all property in subdivision (9)(c)
17 (8)(c) of this section beginning any January 1 after the date the
18 property was placed in service. Such property shall be eligible for
19 exemption from the tax on personal property from the January 1 preceding
20 the first claim for exemption approved under this subdivision through the
21 ninth December 31 after the year the first claim for exemption is
22 approved.

23 (iv) A taxpayer who has a project for an Internet web portal or a
24 data center and who has met the required levels of employment and
25 investment for a tier 2 project or the required level of investment for a
26 tier 5 project, taking into account only the employment and investment at
27 the web portal or data center project, shall receive the exemption of
28 property in subdivision (9)(c)(ii) (8)(c)(ii) of this section. Such
29 property shall be eligible for the exemption from the first January 1
30 following the end of the year during which the required levels were
31 exceeded through the ninth December 31 after the first year any property

1 included in subdivisions (9)(c)(ii) (8)(c)(ii), (iii), (iv), and (v) of
2 this section qualifies for the exemption.

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

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

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

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

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

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

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

1 (d) In order to receive the property tax exemptions allowed by
2 subdivision (9)(c) ~~(8)(c)~~ of this section, the taxpayer shall annually
3 file a claim for exemption with the Tax Commissioner on or before May 1.
4 The form and supporting schedules shall be prescribed by the Tax
5 Commissioner and shall list all property for which exemption is being
6 sought under this section. A separate claim for exemption must be filed
7 for each project and each county in which property is claimed to be
8 exempt. A copy of this form must also be filed with the county assessor
9 in each county in which the applicant is requesting exemption. The Tax
10 Commissioner shall determine whether a taxpayer is eligible to obtain
11 exemption for personal property based on the criteria for exemption and
12 the eligibility of each item listed for exemption and, on or before
13 August 1, certify such to the taxpayer and to the affected county
14 assessor.

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

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

29 (c) For tier 6, beginning October 1, 2008, and each October 1
30 thereafter, the average Producer Price Index for all commodities,
31 published by the United States Department of Labor, Bureau of Labor

1 Statistics, for the most recent twelve available periods shall be divided
2 by the Producer Price Index for the first quarter of 2008 and the result
3 multiplied by the applicable investment threshold. The investment
4 thresholds shall be adjusted for cumulative inflation since 2008.

5 (d) For a tier 2 large data center project, beginning October 1,
6 2012, and each October 1 thereafter, the average Producer Price Index for
7 all commodities, published by the United States Department of Labor,
8 Bureau of Labor Statistics, for the most recent twelve available periods
9 shall be divided by the Producer Price Index for the first quarter of
10 2012 and the result multiplied by the applicable investment threshold.
11 The investment thresholds shall be adjusted for cumulative inflation
12 since 2012.

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

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

20 Sec. 4. Section 77-5726, Revised Statutes Cumulative Supplement,
21 2020, is amended to read:

22 77-5726 (1)(a) The credits prescribed in section 77-5725 for a year
23 shall be established by filing the forms required by the Tax Commissioner
24 with the income tax return for the taxable year which includes the end of
25 the year the credits were earned. The credits may be used and shall be
26 applied in the order in which they were first allowed. The credits may be
27 used after any other nonrefundable credits to reduce the taxpayer's
28 income tax liability imposed by sections 77-2714 to 77-27,135. Credits
29 may be used beginning with the taxable year which includes December 31 of
30 the year the required minimum levels were reached. The last year for
31 which credits may be used is the taxable year which includes December 31

1 of the last year of the carryover period. Any decision on how part of the
2 credit is applied shall not limit how the remaining credit could be
3 applied under this section.

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

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

28 For a tier 6 project, the amount of credits used against income tax
29 withholding shall not exceed the withholding attributable to all
30 employees employed at the project, other than base-year employees and
31 excluding any compensation in excess of one million dollars paid to any

1 one employee during the year.

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

9 (c) Credits may be used to obtain a refund of sales and use taxes
10 under the Local Option Revenue Act, the Nebraska Revenue Act of 1967, and
11 sections 13-319, 13-324, 13-2813, and 77-6403 which are not otherwise
12 refundable that are paid on purchases, including rentals, for use at the
13 project for a tier 1, tier 2, tier 3, or tier 4 project or for use within
14 this state for a tier 2 large data center project or a tier 6 project.

15 (d) The credits earned for a tier 6 project may be used to obtain a
16 payment from the state equal to the real property taxes due after the
17 year the required levels of employment and investment were met and before
18 the end of the carryover period, for real property that is included in
19 such project and acquired by the taxpayer, whether by lease or purchase,
20 after the date the application was filed. Once the required levels of
21 employment and investment for a tier 2 large data center project have
22 been met, the credits earned for a tier 2 large data center project may
23 be used to obtain a payment from the state equal to the real property
24 taxes due after the year of application and before the end of the
25 carryover period, for real property that is included in such project and
26 acquired by the taxpayer, whether by lease or purchase, after the date
27 the application was filed. The payment from the state shall be made only
28 after payment of the real property taxes have been made to the county as
29 required by law. Payments shall not be allowed for any taxes paid on real
30 property for which the taxes are divided under section 18-2147 or 58-507.

31 (e) Credits may be carried over until fully utilized, except that

1 such credits may not be carried over more than nine years after the year
2 of application for a tier 1 or tier 3 project, fourteen years after the
3 year of application for a tier 2 or tier 4 project, or more than sixteen
4 years past the end of the entitlement period for a tier 6 project.

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

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

11 (c) Refund claims for materials purchased by a purchasing agent
12 shall include:

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

14 (ii) The contract price; and

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

20 (B) For refunds under subdivision (2)(a)(iv) of section 77-5725, a
21 certification by the contractor or repairperson of the percentage of the
22 contract price that represents the cost of materials annexed to the
23 project and the percentage of the materials annexed to the project on
24 which sales and use taxes were paid to Nebraska after appointment as
25 purchasing agent.

26 (d) All refund claims shall be filed, processed, and allowed as any
27 other claim under section 77-2708, except that the amounts allowed to be
28 refunded under the Nebraska Advantage Act shall be deemed to be
29 overpayments and shall be refunded notwithstanding any limitation in
30 subdivision (2)(a) of section 77-2708. The refund may be allowed if the
31 claim is filed within three years from the end of the year the required

1 levels of employment and investment are met or within the period set
2 forth in section 77-2708.

3 (e) If a claim for a refund of sales and use taxes under the Local
4 Option Revenue Act or sections 13-319, 13-324, 13-2813, and 77-6403 of
5 more than twenty-five thousand dollars is filed by June 15 of a given
6 year, the refund shall be made on or after November 15 of the same year.
7 If such a claim is filed on or after June 16 of a given year, the refund
8 shall not be made until on or after November 15 of the following year.
9 The Tax Commissioner shall notify the affected city, village, county, or
10 municipal county of the amount of refund claims of sales and use taxes
11 under the Local Option Revenue Act or sections 13-319, 13-324, 13-2813,
12 and 77-6403 that are in excess of twenty-five thousand dollars on or
13 before July 1 of the year before the claims will be paid under this
14 section.

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

17 (3) The appointment of purchasing agents shall be recognized for the
18 purpose of changing the status of a contractor or repairperson as the
19 ultimate consumer of tangible personal property purchased after the date
20 of the appointment which is physically incorporated into or annexed to
21 the project and becomes the property of the owner of the improvement to
22 real estate or the taxpayer. The purchasing agent shall be jointly liable
23 for the payment of the sales and use tax on the purchases with the owner
24 of the property.

25 (4) A determination that a taxpayer is not engaged in a qualified
26 business or has failed to meet or maintain the required levels of
27 employment or investment for incentives, exemptions, or recapture may be
28 protested within sixty days after the mailing of the written notice of
29 the proposed determination. If the notice of proposed determination is
30 not protested within the sixty-day period, the proposed determination is
31 a final determination. If the notice is protested, the Tax Commissioner

1 shall issue a written order resolving such protests. The written order of
2 the Tax Commissioner resolving a protest may be appealed to the district
3 court of Lancaster County within thirty days after the issuance of the
4 order.

5 Sec. 5. Section 77-5727, Reissue Revised Statutes of Nebraska, is
6 amended to read:

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

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

21 (2) In the case of a taxpayer who has failed to maintain the project
22 at the required levels of employment or investment for the entire
23 entitlement period, any reduction in the personal property tax, any
24 refunds in tax or exemptions from tax allowed under subsection (2) of
25 section 77-5725, and any refunds or reduction in tax allowed because of
26 the use of a credit allowed under section 77-5725 shall be partially
27 recaptured from either the taxpayer or the owner of the improvement to
28 real estate and any carryovers of credits shall be partially disallowed.
29 The amount of the recapture shall be a percentage equal to the number of
30 years the taxpayer did not maintain the project at or above the required
31 levels of investment and employment divided by the number of years of the

1 project's entitlement period multiplied by the refunds and exemptions
2 allowed, reduction in personal property tax, the credits used, and the
3 remaining carryovers. In addition, the last remaining year of personal
4 property tax exemption shall be disallowed for each year the taxpayer did
5 not maintain such project at or above the required levels of employment
6 or investment.

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

23 (4) If the taxpayer receives any refund, exemption, refunds or
24 reduction in tax to which the taxpayer was not entitled or which was were
25 in excess of the amount to which the taxpayer was entitled, the refund,
26 exemption, or reduction in tax shall be recaptured separate from any
27 other recapture otherwise required by this section. Any amount recaptured
28 under this subsection shall be excluded from the amounts subject to
29 recapture under other subsections of this section.

30 (5) Any refunds, exemptions, or reduction in tax due, to the extent
31 required to be recaptured, shall be deemed to be an underpayment of the

1 tax and shall be immediately due and payable. When tax benefits were
2 received in more than one year, the tax benefits received in the most
3 recent year shall be recovered first and then the benefits received in
4 earlier years up to the extent of the required recapture.

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

11 (b) For a tier 2 large data center project, any personal property
12 tax that would have been due except for the exemption under the Nebraska
13 Advantage Act, together with interest at the rate provided in section
14 45-104.01 from the original delinquency date of the tax that would have
15 been due until the date paid, to the extent it becomes due under this
16 section, shall be considered delinquent and shall be immediately payable
17 to the county or counties in which the property was located when
18 exempted.

19 (c) All amounts received by a county under this section shall be
20 allocated to each taxing unit levying taxes on tangible personal property
21 in the county in the same proportion that the levy on tangible personal
22 property of such taxing unit bears to the total levy of all of such
23 taxing units.

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

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

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

4 Sec. 6. Section 77-5731, Reissue Revised Statutes of Nebraska, is
5 amended to read:

6 77-5731 (1) The Tax Commissioner shall submit electronically an
7 annual report to the Legislature no later than July 15 of each year. The
8 Department of Revenue shall, on or before September 1 of each year,
9 appear at a joint hearing of the Appropriations Committee of the
10 Legislature and the Revenue Committee of the Legislature and present the
11 report. Any supplemental information requested by three or more committee
12 members shall be presented within thirty days after the request.

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

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

1 payments.

2 (4) In estimating the projected future state revenue gains and
3 losses, the report shall detail the methodology utilized, state the
4 economic multipliers and industry multipliers used to determine the
5 amount of economic growth and positive tax revenue, describe the analysis
6 used to determine the percentage of new jobs attributable to the Nebraska
7 Advantage Act assumption, and identify limitations that are inherent in
8 the analysis method.

9 (5) The report shall provide an explanation of the audit and review
10 processes of the department in approving and rejecting applications or
11 the grant of incentives and in enforcing incentive recapture. The report
12 shall also specify the median period of time between the date of
13 application and the date the agreement is executed for all agreements
14 executed by December 31 of the prior year.

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

30 (7) The report shall include an executive summary which shows
31 aggregate information for all projects for which the information on

1 incentives used in subsection (6) of this section is reported as follows:
2 (a) The total incentives used by all taxpayers for projects detailed in
3 subsection (6) of this section during the previous two years; (b) the
4 number of projects; (c) the new jobs at the project for which credits
5 have been granted; (d) the average compensation paid employees in the
6 state in the year of application and for the new jobs at the project; and
7 (e) the total investment for which incentives were granted. The executive
8 summary shall summarize the number of states which grant investment tax
9 credits, job tax credits, sales and use tax refunds or exemptions for
10 qualified investment, and personal property tax exemptions and the
11 investment and employment requirements under which they may be granted.

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

14 Sec. 7. Section 77-5735, Reissue Revised Statutes of Nebraska, is
15 amended to read:

16 77-5735 (1) The changes made in sections 77-5703, 77-5708, 77-5712,
17 77-5714, 77-5715, 77-5723, 77-5725, 77-5726, 77-5727, and 77-5731 by Laws
18 2008, LB895, and sections 77-5707.01, 77-5719.01, and 77-5719.02 apply to
19 all applications filed on and after April 18, 2008. For all applications
20 filed prior to such date, the provisions of the Nebraska Advantage Act as
21 they existed immediately prior to such date apply.

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

30 (3) The changes made in sections 77-5707, 77-5715, 77-5719, and
31 77-5725 by Laws 2010, LB918, apply to all applications filed on or after

1 July 15, 2010. For all applications filed prior to such date, the
2 provisions of the Nebraska Advantage Act as they existed immediately
3 prior to such date apply.

4 (4) The changes made in sections 77-5701, 77-5703, 77-5705, 77-5715,
5 77-5723, 77-5725, 77-5726, and 77-5727 by Laws 2012, LB1118, apply to all
6 applications filed on or after March 8, 2012. For all applications filed
7 prior to such date, the provisions of the Nebraska Advantage Act as they
8 existed immediately prior to such date apply.

9 (5) The changes made in sections 77-5707.01, 77-5709, 77-5712,
10 77-5719, 77-5720, 77-5723, and 77-5726 by Laws 2013, LB34, apply to all
11 applications filed on or after September 6, 2013. For all applications
12 filed prior to such date, the provisions of the Nebraska Advantage Act as
13 they existed immediately prior to such date apply.

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

16 (7) The changes made in sections 77-5705, 77-5723, 77-5725, 77-5726,
17 77-5727, and 77-5731 by this legislative bill apply to all agreements
18 entered into under the Nebraska Advantage Act on or after the effective
19 date of this act. For any agreement entered into prior to the effective
20 date of this act that is still active as of such date, the taxpayer may
21 make a one-time election, within the time period prescribed by the Tax
22 Commissioner, to have the changes made in sections 77-5705, 77-5723,
23 77-5725, 77-5726, 77-5727, and 77-5731 by this legislative bill apply to
24 such taxpayer's agreement, or in the absence of such an election, the
25 provisions of the Nebraska Advantage Act as they existed immediately
26 prior to the effective date of this act shall apply to such agreement.

27 Sec. 8. Original sections 77-5705, 77-5723, 77-5727, 77-5731, and
28 77-5735, Reissue Revised Statutes of Nebraska, and sections 77-5725 and
29 77-5726, Revised Statutes Cumulative Supplement, 2020, are repealed.