

LEGISLATURE OF NEBRASKA

ONE HUNDRED SECOND LEGISLATURE

SECOND SESSION

LEGISLATIVE BILL 1118

Final Reading

(Second)

Introduced by Cornett, 45; Hadley, 37; Pirsch, 4.

Read first time January 19, 2012

Committee: Revenue

A BILL

1 FOR AN ACT relating to the Nebraska Advantage Act; to amend sections
2 77-5701, 77-5703, 77-5705, 77-5723, and 77-5727, Reissue
3 Revised Statutes of Nebraska, and sections 77-5715,
4 77-5725, 77-5726, and 77-5735, Revised Statutes
5 Cumulative Supplement, 2010; to provide tax incentives
6 for large data center projects; to define and redefine
7 terms; to harmonize provisions; to repeal the original
8 sections; and to declare an emergency.

9 Be it enacted by the people of the State of Nebraska,

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

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

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

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

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

20 Sec. 4. Section 77-5705, Reissue Revised Statutes of
21 Nebraska, is amended to read:

22 77-5705 Base Except for a tier 5 project that is
23 sequential to a tier 2 large data center project, base year means the
24 year immediately preceding the year of application. For a tier 5
25 project that is sequential to a tier 2 large data center project, the

1 base year means the last year of the tier 2 large data center project
2 entitlement period relating to direct sales tax refunds.

3 Sec. 5. Section 77-5715, Revised Statutes Cumulative
4 Supplement, 2010, is amended to read:

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

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

10 (b) The performance of data processing,
11 telecommunication, insurance, or financial services. For purposes of
12 this subdivision, financial services includes only financial services
13 provided by any financial institution subject to tax under Chapter
14 77, article 38, or any person or entity licensed by the Department of
15 Banking and Finance or the federal Securities and Exchange Commission
16 and telecommunication services includes community antenna television
17 service, Internet access, satellite ground station, ~~data center~~, call
18 center, or telemarketing;

19 (c) The assembly, fabrication, manufacture, or processing
20 of tangible personal property;

21 (d) The administrative management of the taxpayer's
22 activities, including headquarter facilities relating to such
23 activities or the administrative management of any of the activities
24 of any business entity or entities in which the taxpayer or a group
25 of its shareholders holds any direct or indirect ownership interest

1 of at least ten percent, including headquarter facilities relating to
2 such activities;

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

5 (f) The sale of tangible personal property if the
6 taxpayer derives at least seventy-five percent or more of the sales
7 or revenue attributable to such activities relating to the project
8 from sales to consumers who are not related persons and are located
9 outside the state;

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

24 (h) The research, development, and maintenance of an
25 Internet web portal. For purposes of this subdivision, Internet web

1 portal means an Internet site that allows users to access, search,
2 and navigate the Internet;

3 (i) The research, development, and maintenance of a data
4 center; ~~For purposes of this subdivision, data center means a group~~
5 ~~of computers, supporting equipment, and other organized assembly of~~
6 ~~hardware or software in one or more interrelated physical locations~~
7 ~~that is designed to centralize the storage, management, or~~
8 ~~dissemination of data and information; or~~

9 (j) Any combination of the activities listed in this
10 subsection.

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

13 (a) The conducting of research, development, or testing
14 for scientific, agricultural, animal husbandry, food product, or
15 industrial purposes;

16 (b) The assembly, fabrication, manufacture, or processing
17 of tangible personal property;

18 (c) The sale of software development services, computer
19 systems design, product testing services, or guidance or surveillance
20 systems design services or the licensing of technology if the
21 taxpayer derives at least seventy-five percent of the sales or
22 revenue attributable to such activities relating to the project from
23 sales or licensing either to customers who are not related persons
24 and are located outside the state or to the United States Government,
25 including sales of such services, systems, or products delivered by

1 providing the customer with software or access to software over the
2 Internet or by other electronic means, regardless of whether the
3 software or data accessed by customers is stored on a computer owned
4 by the applicant, the customer, or a third party and regardless of
5 whether the computer storing the software or data is located at the
6 project; or

7 (d) Any combination of activities listed in this
8 subsection.

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

12 (4) Except for business activity described in subdivision
13 (1)(f) of this section, qualified business does not include any
14 business activity in which eighty percent or more of the total sales
15 are sales to the ultimate consumer of (a) food prepared for immediate
16 consumption or (b) tangible personal property which is not assembled,
17 fabricated, manufactured, or processed by the taxpayer or used by the
18 purchaser in any of the activities listed in subsection (1) or (2) of
19 this section.

20 Sec. 6. Section 77-5723, Reissue Revised Statutes of
21 Nebraska, is amended to read:

22 77-5723 (1) In order to utilize the incentives set forth
23 in the Nebraska Advantage Act, the taxpayer shall file an
24 application, on a form developed by the Tax Commissioner, requesting
25 an agreement with the Tax Commissioner.

1 (2) The application shall contain:

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

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

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

15 (d) A nonrefundable application fee of one thousand
16 dollars for a tier 1 project, two thousand five hundred dollars for a
17 tier 2, tier 3, or tier 5 project, five thousand dollars for a tier 4
18 project, and ten thousand dollars for a tier 6 project. The fee shall
19 be credited to the Nebraska Incentives Fund; and

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

24 The application and all supporting information shall be
25 confidential except for the name of the taxpayer, the location of the

1 project, the amounts of increased employment and investment, and the
2 information required to be reported by sections 77-5731 and 77-5734.

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

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

24 (5) After approval, the taxpayer and the Tax Commissioner
25 shall enter into a written agreement. The taxpayer shall agree to

1 complete the project, and the Tax Commissioner, on behalf of the
2 State of Nebraska, shall designate the approved plan of the taxpayer
3 as a project and, in consideration of the taxpayer's agreement, agree
4 to allow the taxpayer to use the incentives contained in the Nebraska
5 Advantage Act. The application, and all supporting documentation, to
6 the extent approved, shall be considered a part of the agreement. The
7 agreement shall state:

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

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

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

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

15 (e) A requirement that the company update the Department
16 of Revenue annually on any changes in plans or circumstances which
17 affect the timetable of sales tax refunds as set out in the
18 application. If the company fails to comply with this requirement,
19 the Tax Commissioner may defer any pending sales tax refunds until
20 the company does comply.

21 (6) The incentives contained in section 77-5725 shall be
22 in lieu of the tax credits allowed by the Nebraska Advantage Rural
23 Development Act for any project. In computing credits under the act,
24 any investment or employment which is eligible for benefits or used
25 in determining benefits under the Nebraska Advantage Act shall be

1 subtracted from the increases computed for determining the credits
2 under section 77-27,188. New investment or employment at a project
3 location that results in the meeting or maintenance of the employment
4 or investment requirements, the creation of credits, or refunds of
5 taxes under the Employment and Investment Growth Act shall not be
6 considered new investment or employment for purposes of the Nebraska
7 Advantage Act. The use of carryover credits under the Employment and
8 Investment Growth Act, the Invest Nebraska Act, the Nebraska
9 Advantage Rural Development Act, or the Quality Jobs Act shall not
10 preclude investment and employment from being considered new
11 investment or employment under the Nebraska Advantage Act. The use of
12 property tax exemptions at the project under the Employment and
13 Investment Growth Act shall not preclude investment not eligible for
14 the property tax exemption from being considered new investment under
15 the Nebraska Advantage Act.

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

25 (8) The taxpayer may request that an agreement be

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

10 Sec. 7. Section 77-5725, Revised Statutes Cumulative
11 Supplement, 2010, is amended to read:

12 77-5725 (1) Applicants may qualify for benefits under the
13 Nebraska Advantage Act in one of six tiers:

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

25 (b) Tier 2, (i) investment in qualified property of at

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

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

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

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

24 (f) Tier 6, investment in qualified property of at least
25 ten million dollars and the hiring of at least seventy-five new

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

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

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

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

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

23 (iii) Tangible personal property by a contractor or
24 repairperson after appointment as a purchasing agent of the owner of
25 the improvement to real estate when such property is incorporated

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

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

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

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

25 (3) Any taxpayer who qualifies for a tier 1, tier 2, tier

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

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

25 (b) Average wage of new employees means the average

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

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

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

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

23 (6) The credits prescribed in subsections (3), (4), and
24 (5) of this section shall be allowable for compensation paid and
25 investments made during each year of the entitlement period that the

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

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

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

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

1 and (v) of this section qualifies for the exemption.

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

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

20 (iv) A taxpayer who has a project for an Internet web
21 portal or a data center and who has met the required levels of
22 employment and investment for a tier 2 project or the required level
23 of investment for a tier 5 project, taking into account only the
24 employment and investment at the web portal or data center project,
25 shall receive the incentive provided in this subsection for exemption

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

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

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

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

19 (ii) Computer systems, made up of equipment that is
20 interconnected in order to enable the acquisition, storage,
21 manipulation, management, movement, control, display, transmission,
22 or reception of data involving computer software and hardware, used
23 for business information processing which require environmental
24 controls of temperature and power and which are capable of
25 simultaneously supporting more than one transaction and more than one

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

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

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

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

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

25 (d) In order to receive the property tax exemptions

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

22 (9)(a) The investment thresholds in this section for a
23 particular year of application shall be adjusted by the method
24 provided in this subsection.

25 (b) For tier 1, tier 2, tier 4, and tier 5, beginning

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

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

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

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

1 million dollars.

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

7 Sec. 8. Section 77-5726, Revised Statutes Cumulative
8 Supplement, 2010, is amended to read:

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

18 (b) The taxpayer may use the credit provided in
19 subsection (3) of section 77-5725 to reduce the taxpayer's income tax
20 withholding employer or payor tax liability under section 77-2756 or
21 77-2757 to the extent such liability is attributable to the number of
22 new employees at the project, excluding any compensation in excess of
23 one million dollars paid to any one employee during the year. The
24 taxpayer may use the credit provided in subsection (4) of section
25 77-5725 to reduce the taxpayer's income tax withholding employer or

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

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

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

24 If the amount of credit used by the taxpayer against
25 income tax withholding exceeds this amount, the excess withholding

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

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

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

1 date the application was filed. The payment from the state shall be
2 made only after payment of the real property taxes have been made to
3 the county as required by law. Payments shall not be allowed for any
4 taxes paid on real property for which the taxes are divided under
5 section 18-2147 or 58-507.

6 (e) Credits may be carried over until fully utilized,
7 except that such credits may not be carried over more than nine years
8 after the year of application for a tier 1 or tier 3 project,
9 fourteen years after the year of application for a tier 2 or tier 4
10 project, or more than one year past the end of the entitlement period
11 for a tier 6 project.

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

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

18 (c) Refund claims for materials purchased by a purchasing
19 agent shall include:

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

21 (ii) The contract price; and

22 (iii)(A) For refunds under subdivision (2)(a)(iii) or (2)
23 (a)(v) of section 77-5725, a certification by the contractor or
24 repairperson of the percentage of the materials incorporated into or
25 annexed to the project on which sales and use taxes were paid to

1 Nebraska after appointment as purchasing agent; or

2 (B) For refunds under subdivision (2)(a)(iv) of section
3 77-5725, a certification by the contractor or repairperson of the
4 percentage of the contract price that represents the cost of
5 materials annexed to the project and the percentage of the materials
6 annexed to the project on which sales and use taxes were paid to
7 Nebraska after appointment as purchasing agent.

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

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

1 five thousand dollars on or before July 1 of the year before the
2 claims will be paid under this section.

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

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

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

24 Sec. 9. Section 77-5727, Reissue Revised Statutes of
25 Nebraska, is amended to read:

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

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

16 (2) In the case of a taxpayer who has failed to maintain
17 the project at the required levels of employment or investment for
18 the entire entitlement period, any reduction in the personal property
19 tax, any refunds in tax allowed under subsection (2) of section
20 77-5725, and any refunds or reduction in tax allowed because of the
21 use of a credit allowed under section 77-5725 shall be partially
22 recaptured from either the taxpayer or the owner of the improvement
23 to real estate and any carryovers of credits shall be partially
24 disallowed. The amount of the recapture shall be a percentage equal
25 to the number of years the taxpayer did not maintain the project at

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

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

25 (4) If the taxpayer receives any refunds or reduction in

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

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

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

19 (b) For a tier 2 large data center project, any personal
20 property tax that would have been due except for the exemption under
21 the Nebraska Advantage Act, together with interest at the rate
22 provided in section 45-104.01 from the original delinquency date of
23 the tax that would have been due until the date paid, to the extent
24 it becomes due under this section, shall be considered delinquent and
25 shall be immediately payable to the county or counties in which the

1 property was located when exempted.

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

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

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

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

18 Sec. 10. Section 77-5735, Revised Statutes Cumulative
19 Supplement, 2010, is amended to read:

20 77-5735 (1) The changes made in sections 77-5703,
21 77-5708, 77-5712, 77-5714, 77-5715, 77-5723, 77-5725, 77-5726,
22 77-5727, and 77-5731 by Laws 2008, LB 895, and sections 77-5707.01,
23 77-5719.01, and 77-5719.02 apply to all applications filed on and
24 after April 18, 2008. For all applications filed prior to such date,
25 the provisions of the Nebraska Advantage Act as they existed

1 immediately prior to such date apply.

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

11 (3) The changes made in sections 77-5707, 77-5715,
12 77-5719, and 77-5725 by Laws 2010, LB918, apply to all applications
13 filed on or after July 15, 2010. For all applications filed prior to
14 such date, the provisions of the Nebraska Advantage Act as they
15 existed immediately prior to such date apply.

16 (4) The changes made in sections 77-5701, 77-5703,
17 77-5705, 77-5715, 77-5723, 77-5725, 77-5726, and 77-5727 by this
18 legislative bill apply to all applications filed on or after the
19 effective date of this act. For all applications filed prior to such
20 date, the provisions of the Nebraska Advantage Act as they existed
21 immediately prior to such date apply.

22 Sec. 11. Original sections 77-5701, 77-5703, 77-5705,
23 77-5723, and 77-5727, Reissue Revised Statutes of Nebraska, and
24 sections 77-5715, 77-5725, 77-5726, and 77-5735, Revised Statutes
25 Cumulative Supplement, 2010, are repealed.

1 Sec. 12. Since an emergency exists, this act takes effect
2 when passed and approved according to law.