LEGISLATURE OF NEBRASKA

ONE HUNDRED THIRD LEGISLATURE

FIRST SESSION

LEGISLATIVE BILL 104

Introduced by Lathrop, 12.

Read first time January 10, 2013

Committee: Revenue

A BILL

FOR AN ACT relating to the Nebraska Advantage Act; to amend section 77-5708, Reissue Revised Statutes of Nebraska, and sections 77-5715, 77-5723, 77-5725, and 77-5727, Revised Statutes Cumulative Supplement, 2012; to provide tax incentives for renewable energy projects as prescribed; to define and redefine terms; to harmonize provisions; and to repeal the original sections.

Be it enacted by the people of the State of Nebraska, Section 1. Section 77-5708, Reissue Revised Statutes of Nebraska, is amended to read:

77-5708 Entitlement period, for a tier 1 or tier 3 project, means the year during which the required increases in employment and investment were met or exceeded and each year thereafter until the end of the ninth year following the year of application or the sixth year after the year the required increases were met or exceeded, whichever is sooner. Entitlement period, for a tier 2, tier 4, or tier 5 project, means the year during which the required increases in employment and investment were met or exceeded and each year thereafter until the end of the sixth year after the year the required increases were met or exceeded. Entitlement period, for a tier 6 project, means the year during which the required increases in employment and investment were met or exceeded and each year thereafter until the end of the ninth year after the year the required increases were met or exceeded. <u>Entitlement period, for a tier 7 project, means the year during which the required increase in investment was met or exceeded and each year thereafter until the end of the sixth year after the year the required increase was met or exceeded.</u>

Sec. 2. Section 77-5715, Revised Statutes Cumulative Supplement, 2012, is amended to read:

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

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

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

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

(d) The administrative management of the taxpayer's activities, including headquarter facilities relating to such activities or the administrative management of any of the activities of any business entity or entities in which the taxpayer or a group of its shareholders holds any direct or indirect ownership interest of at least ten percent, including headquarter facilities relating to such activities;

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

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

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

(h) The research, development, and maintenance of an Internet web portal. For purposes of this subdivision, Internet web portal means an Internet site that allows users to access, search, and navigate the Internet;

(i) The research, development, and maintenance of a data center; or

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

(2) For a tier 1 project, qualified business means any

business engaged in:

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

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

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

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

(3) For a tier 6 project, qualified business means any business except a business excluded by subsection ~~(4)~~ (5) of this section.

(4) For a tier 7 project, qualified business means any business engaged in the production of electricity by using one or more sources of renewable energy to produce electricity for sale. For purposes of this subsection, sources of renewable energy means wind, solar, geothermal, hydroelectric, and biomass.

~~(4)~~ (5) Except for business activity described in subdivision (1)(f) of this section, qualified business does not include any business activity in which eighty percent or more of the total sales are sales to the ultimate consumer of (a) food prepared for immediate consumption or (b) tangible personal property which is not assembled, fabricated, manufactured, or processed by the taxpayer or used by the purchaser in any of the activities listed in subsection (1) or (2) of this section.

Sec. 3. Section 77-5723, Revised Statutes Cumulative Supplement, 2012, is amended to read:

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

(2) The application shall contain:

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

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

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

(d) A nonrefundable application fee of one thousand dollars for a tier 1 project, two thousand five hundred dollars for a tier 2, tier 3, ~~or~~ tier 5, or tier 7 project, five thousand dollars for a tier 4 project, and ten thousand dollars for a tier 6 project. The fee shall be credited to the Nebraska Incentives Fund; ~~and~~

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

(f) For a tier 7 project, a schedule showing the yearly amounts of any projected contributions to an employee ownership arrangement as defined in section 77-5725.

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

(3) An application must be complete to establish the date

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

(4) Once satisfied that the plan in the application defines a project consistent with the purposes stated in the Nebraska Advantage Act in one or more qualified business activities within this state, that the taxpayer and the plan will qualify for benefits under the act, and that the required levels of employment and investment for the project will be met prior to the end of the fourth year after the year in which the application was submitted for a tier 1, tier 3, ~~or~~ tier 6, or tier 7 project or the end of the sixth year after the year in which the application was submitted for a tier 2, tier 4, or tier 5 project, the Tax Commissioner shall approve the application. For a tier 5 project that is sequential to a tier 2 large data center project, the required level of investment shall be met prior to the end of the fourth year after the expiration of the tier 2 large data center project entitlement period relating to direct sales tax refunds.

(5) After approval, the taxpayer and the Tax Commissioner shall enter into a written agreement. The taxpayer shall agree to complete the project, and the Tax Commissioner, on behalf of the State of Nebraska, shall designate the approved plan of the taxpayer as a project and, in consideration of the taxpayer's agreement, agree

to allow the taxpayer to use the incentives contained in the Nebraska Advantage Act. The application, and all supporting documentation, to the extent approved, shall be considered a part of the agreement. The agreement shall state:

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

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

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

(d) The date the application was filed; and

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

(6) The incentives contained in section 77-5725 shall be in lieu of the tax credits allowed by the Nebraska Advantage Rural Development Act for any project. In computing credits under the act, any investment or employment which is eligible for benefits or used in determining benefits under the Nebraska Advantage Act shall be subtracted from the increases computed for determining the credits under section 77-27,188. New investment or employment at a project location that results in the meeting or maintenance of the employment

or investment requirements, the creation of credits, or refunds of taxes under the Employment and Investment Growth Act shall not be considered new investment or employment for purposes of the Nebraska Advantage Act. The use of carryover credits under the Employment and Investment Growth Act, the Invest Nebraska Act, the Nebraska Advantage Rural Development Act, or the Quality Jobs Act shall not preclude investment and employment from being considered new investment or employment under the Nebraska Advantage Act. The use of property tax exemptions at the project under the Employment and Investment Growth Act shall not preclude investment not eligible for the property tax exemption from being considered new investment under the Nebraska Advantage Act.

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

(8) The taxpayer may request that an agreement be modified if the modification is consistent with the purposes of the act and does not require a change in the description of the project. An agreement may not be modified to a tier that would grant a higher

level of benefits to the taxpayer or to a tier 1 project. Once satisfied that the modification to the agreement is consistent with the purposes stated in the act, the Tax Commissioner and taxpayer may amend the agreement. For a tier 6 project, the taxpayer must agree to limit the project to qualified activities allowable under tier 2 and tier 4.

Sec. 4. Section 77-5725, Revised Statutes Cumulative Supplement, 2012, is amended to read:

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

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

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

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

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

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

(f) Tier 6, investment in qualified property of at least ten million dollars and the hiring of at least seventy-five new employees or the investment in qualified property of at least one hundred million dollars and the hiring of at least fifty new employees. Agreements may be executed with regard to completed project applications filed before January 1, 2016. All project agreements pending, approved, or entered into before such date shall continue in full force and effect; and ~~.~~

(g) Tier 7, investment in qualified property in amounts as set forth in subsection (9) of this section. Agreements may be executed with regard to completed project applications filed before January 1, 2019. All project agreements pending, approved, or entered into before such date shall continue in full force and effect.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(6) The credits prescribed in subsections (3), (4), and

(5) of this section shall be allowable for compensation paid and investments made during each year of the entitlement period that the taxpayer is at or above the required levels of employment and investment.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(9)(a) A taxpayer who has met the levels of investment described in this subsection pursuant to an agreement for a tier 7 project shall be entitled to incentives as follows:

(i) For a tier 7 project that had investment in qualified property of any amount less than seventy-five million dollars:

(A) A refund of fifty percent of all sales and use taxes paid under the Nebraska Revenue Act of 1967 for the project;

(B) A refund of an additional twenty-five percent of all sales and use taxes paid under the Nebraska Revenue Act of 1967 for the project if the taxpayer expended twenty-five percent or more of its total expenditures for the tier 7 project on the following items, regardless of whether incurred or purchased prior to the date of the application for the tier 7 project:

(I) Lease and easement payments and similar payments to property owners on whose property a tier 7 project is located or whose property is part of a tier 7 project during the life of the project;

(II) Projected contributions to an employee ownership arrangement multiplied by a factor of six, not to exceed five percent of total expenditures; and

(III) Goods and services, including concrete, steel, gravel, towers, turbines, blades, wire, contractor services, engineering services, geotechnical services, environmental consulting services, meteorological services, legal services, financial fees paid to Nebraska financial institutions, or other components, equipment, materials, or services that are necessary to permit or construct a project, if such goods or services are manufactured, assembled, or fabricated in Nebraska or performed primarily by Nebraska residents or by organizations that are organized under Nebraska law; and

(C) A refund of an additional twenty-five percent of all sales and use taxes paid under the Nebraska Revenue Act of 1967 for the project if the taxpayer is a Nebraska resident or, if the taxpayer is a business entity, if Nebraska residents own at least twenty-five percent of the taxpayer; or

(ii) For a tier 7 project that had investment in qualified property of seventy-five million dollars or more:

(A) A refund of seventy-five percent of all sales and use taxes paid under the Nebraska Revenue Act of 1967 for the project; and

(B) A refund of the remaining twenty-five percent of all sales and use taxes paid under the Nebraska Revenue Act of 1967 for the project if the taxpayer expended twenty-five percent or more of its total expenditures for the tier 7 project on the items listed in subdivisions (9)(a)(i)(B)(I), (II), and (III) of this section, regardless of whether incurred or purchased prior to the date of the application for the tier 7 project.

(b) For purposes of this subsection:

(i) Contributions of stock or equity ownership interests means the direct transfer of stock or equity ownership interests to (A) a qualifying employee, (B) an employee stock ownership plan meeting the requirements of section 4975(e)(7) of the Internal Revenue Code of 1986, as amended, for the benefit of qualifying employees of the issuer or an entity that is a member of the same controlled group of corporations, as defined in section 409(l)(4) of the Internal Revenue Code of 1986, as amended, that includes the issuer, but only if the sponsor of the employee stock ownership plan also maintains a diversified profit sharing plan described in subdivision (9)(b)(v)(D) of this section, or (C) a qualifying operations and maintenance entity;

(ii) Issuer means the entity that owns the project or the entity that owns more than fifty percent of the entity that owns the project. An issuer shall meet the requirements provided in subdivision (9)(e) of this section;

(iii) Projected contributions to an employee ownership arrangement means the sum of the projected annual contributions of stock or equity ownership interests in the issuer, beginning no later than sixty-one months after the project begins producing electricity, over a twenty-year period beginning with the year the project begins producing electricity;

(iv) Qualifying employee means an employee involved in the onsite maintenance or operation of the qualified business who is not a highly compensated employee as described in section 414(q) of the Internal Revenue Code of 1986, as amended; and

(v) Qualifying operations and maintenance entity means an entity certifying to the issuer that it meets the following requirements:

(A) The entity is the employer of employees involved in the maintenance or operation of the facilities or equipment of a qualified business;

(B) The entity:

(I) Sponsors an employee stock ownership plan meeting the requirements of section 4975(e)(7) of the Internal Revenue Code of 1986, as amended, for the benefit of qualifying employees; or

(II) Will directly transfer the issuer's contributions to the qualifying operations and maintenance entity's qualifying employees in the proportion that each qualifying employee's W-2 compensation for the calendar year in which the transfer is received bears to the W-2 compensation of all such qualifying employees or to a trust or other entity, the beneficiaries of which are qualifying employees, which allocates the contribution in the proportion that each qualifying employee's W-2 compensation for the calendar year in which the transfer is received bears to the W-2 compensation of all such qualifying employees and which distributes any income from the stock or ownership interest to the beneficiaries within sixty days of receipt;

(C) In the case of a direct transfer of the issuer's contributions described in subdivision (9)(b)(v)(B)(II) of this section, the qualifying employee or beneficiary thereof has the option to sell the interest to the qualifying operations and maintenance entity or, if directed by the qualifying operations and maintenance entity, to the issuer for the fair market value of the interest determined without discount for a minority interest or lack of marketability upon the earliest of the qualifying employee's severance from employment from the qualifying operations and maintenance entity, death, or any issuer annual valuation date elected by the qualifying employee on thirty days' advance notice to the qualifying operations and maintenance entity following the qualifying employee's completion of ten years of service with the qualifying operations and maintenance entity; and

(D) The entity sponsors a diversified profit sharing plan meeting the requirements of section 401(a) of the Internal Revenue Code of 1986, as amended, for the benefit of qualifying employees providing for (I) a nonelective employer contribution of at least three percent of the employee's compensation or a contribution matching the elective deferrals under a plan meeting the requirements of section 401(k) of the Internal Revenue Code of 1986, as amended, at the rate of fifty percent of the participant's elective deferrals not exceeding six percent of the participant's compensation and (II) the investment of contributions thereto in diversified investments other than issuer of qualifying operations and maintenance entity equity interest.

(c) For purposes of determining projected contributions to an employee ownership arrangement, only a percentage of the contributions to a qualifying operations and maintenance entity sponsoring an employee stock ownership plan shall be considered, and such percentage is equal to the percentage of the total equity interests of the qualifying operations and maintenance entity owned by the employee stock ownership plan.

(d) The issuer's stock or equity ownership interests shall be valued on an annual date designated by the issuer at their fair market value determined under section 83 of the Internal Revenue Code of 1986, as amended, and such value shall be certified to the owners of the stock or equity ownership interests.

(e) The bylaws or other organizational documents for the issuer shall provide that all equity owners owe a duty to the other owners to act in an honest, fair, and reasonable manner toward each other in the operation of the entity according to the reasonable expectations of the owners as they exist at the inception of the entity and develop during the course of the owners' relationship with the entity and with each other. The bylaws or other organizational documents for the issuer shall further provide that the owners and entity agree that they will not engage in oppression, fraud, or unfairly prejudicial conduct that is burdensome, harsh, wrongful, or departing from standards of fair dealing and fair play. Examples of

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such conduct include withholding of distributions to minority owners, making excessive payments to majority owners, withholding information relevant to the operation of the entity concerning important business matters, procedural violations regarding management, or making deceptive or manipulative business plans that deprive a minority owner of the owner's rightful share of the profits of the entity. The entity shall consent to the jurisdiction and venue of the courts of Nebraska for any action by a minority owner arising out of the violation of any such provision. In any such action, the prevailing party may recover its reasonable attorney's fees and costs. A court may order any relief at law or equity if the court determines a violation has occurred.

~~(9)(a)~~ (10)(a) The investment thresholds in this section for a particular year of application shall be adjusted by the method provided in this subsection.

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

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

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

(e) For tier 7, beginning October 1, 2013, and each October 1 thereafter, the average Producer Price Index for all commodities, published by the United States Department of Labor, Bureau of Labor Statistics, for the most recent twelve available periods shall be divided by the Producer Price Index for the first quarter of 2013 and the result multiplied by the applicable investment threshold. The investment thresholds shall be adjusted for cumulative inflation since 2013.

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

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

Sec. 5. Section 77-5727, Revised Statutes Cumulative Supplement, 2012, is amended to read:

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

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

(2) In the case of a taxpayer who has failed to maintain the project at the required levels of employment or investment for the entire entitlement period, any reduction in the personal property

tax, any refunds in tax allowed under subsection (2) <u>or (9)</u> of section 77-5725, and any refunds or reduction in tax allowed because of the use of a credit allowed under section 77-5725 shall be partially recaptured from either the taxpayer or the owner of the improvement to real estate and any carryovers of credits shall be partially disallowed. The amount of the recapture shall be a percentage equal to the number of years the taxpayer did not maintain the project at or above the required levels of investment and employment divided by the number of years of the project's entitlement period multiplied by the refunds allowed, reduction in personal property tax, the credits used, and the remaining carryovers. In addition, the last remaining year of personal property tax exemption shall be disallowed for each year the taxpayer did not maintain such project at or above the required levels of employment or investment.

(3) In the case of a taxpayer qualified under tier 5 who has failed to maintain the average number of equivalent employees at the project at the end of the six years following the year the taxpayer attained the required amount of investment, any refunds in tax allowed under subsection (2) of section 77-5725 or any reduction in the personal property tax under section 77-5725 shall be partially recaptured from the taxpayer. The amount of recapture shall be the total amount of refunds and reductions in tax allowed for all years times the reduction in the average number of equivalent employees employed at the end of the entitlement period from the number of

equivalent employees employed in the base year divided by the number of equivalent employees employed in the base year. For purposes of this subsection, the average number of equivalent employees shall be calculated at the end of the entitlement period by adding the number of equivalent employees in the year the taxpayer attains the required level of investment and each of the next following six years and dividing the result by seven.

(4) In the case of a taxpayer qualified under tier 7 who has failed to make contributions of stock or equity ownership interests in accordance with the schedule of projected contributions to an employee ownership arrangement included with the taxpayer's application pursuant to subdivision (2)(f) of section 77-5723, any refunds in tax allowed under subsection (9) of section 77-5725 shall be recaptured from the taxpayer plus interest on the amount to be recaptured at the rate specified in section 45-104.02, as such rate may from time to time be adjusted, from the date of the refund of the taxes until the date of recapture.

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

~~(5)~~ (6) Any refunds or reduction in tax due, to the extent required to be recaptured, shall be deemed to be an underpayment of the tax and shall be immediately due and payable. When tax benefits were received in more than one year, the tax benefits received in the most recent year shall be recovered first and then the benefits received in earlier years up to the extent of the required recapture.

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

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

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

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

~~(8)~~ (9) Any amounts due under this section shall be recaptured notwithstanding other allowable credits and shall not be subsequently refunded under any provision of the Nebraska Advantage Act unless the recapture was in error.

~~(9)~~ (10) The recapture required by this section shall not occur if the failure to maintain the required levels of employment or investment was caused by an act of God or national emergency.

Sec. 6. Original section 77-5708, Reissue Revised Statutes of Nebraska, and sections 77-5715, 77-5723, 77-5725, and 77-5727, Revised Statutes Cumulative Supplement, 2012, are repealed.