

LEGISLATURE OF NEBRASKA
ONE HUNDRED SIXTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 419

Introduced by Bolz, 29.

Read first time January 18, 2019

Committee: Revenue

1 A BILL FOR AN ACT relating to revenue and taxation; to amend sections
2 77-5701, 77-5702, 77-5714, 77-5723, 77-5725, 77-5726, and 77-5735,
3 Reissue Revised Statutes of Nebraska; to change the Nebraska
4 Advantage Act as prescribed; to create a fund and a grant program;
5 to harmonize provisions; and to repeal the original sections.
6 Be it enacted by the people of the State of Nebraska,

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

3 77-5701 Sections 77-5701 to 77-5735 and section 7 of this act shall
4 be known and may be cited as the Nebraska Advantage Act.

5 Sec. 2. Section 77-5702, Reissue Revised Statutes of Nebraska, is
6 amended to read:

7 77-5702 The Legislature hereby finds and declares that it is the
8 policy of this state to make revisions in Nebraska's tax structure in
9 order to (1) encourage new businesses to relocate to Nebraska, (2) retain
10 existing businesses and aid in their expansion, (3) promote the creation
11 and retention of new, quality jobs in Nebraska, specifically jobs that
12 pay above the Nebraska average weekly wage and that include employer-
13 provided health care benefits related to research and development,
14 ~~manufacturing, and large data centers,~~ and (4) attract and retain
15 investment capital in the State of Nebraska.

16 Sec. 3. Section 77-5714, Reissue Revised Statutes of Nebraska, is
17 amended to read:

18 77-5714 (1) Number of new employees, for a tier 1, tier 2, tier 3,
19 or tier 4 project, means the number of equivalent employees that are
20 employed at the project during a year that are in excess of the number of
21 equivalent employees during the base year, not to exceed the number of
22 equivalent employees employed at the project during a year who are not
23 base-year employees, who are offered employer-provided health care
24 benefits, and who are paid wages at a rate equal to at least one hundred
25 thirty six percent of the Nebraska average weekly wage for the year of
26 application.

27 (2) Number of new employees, for a tier 6 project, means the number
28 of equivalent employees that are employed at the project during a year
29 that are in excess of the number of equivalent employees during the base
30 year, not to exceed the number of equivalent employees employed at the
31 project during a year who are not base-year employees and who are paid at

1 a rate equal to or greater than the tier 6 weekly required compensation
2 for the year of application.

3 (3) Teleworkers working for wages or salaries in Nebraska from their
4 residences for a taxpayer on tasks interdependent with the work performed
5 at the project shall be considered to be employed at the project.

6 (4) Employees who work at a military installation in Nebraska for a
7 taxpayer on tasks interdependent with the work performed at the project
8 shall be considered to be employed at the project.

9 Sec. 4. Section 77-5723, Reissue Revised Statutes of Nebraska, is
10 amended to read:

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

15 (2) The application shall contain:

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

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

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

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

1 Nebraska Incentives Fund; and

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

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

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

15 (4) Once satisfied that the plan in the application defines a
16 project consistent with the purposes stated in the Nebraska Advantage Act
17 in one or more qualified business activities within this state, that the
18 taxpayer and the plan will qualify for benefits under the act, and that
19 the required levels of employment and investment for the project will be
20 met prior to the end of the fourth year after the year in which the
21 application was submitted for a tier 1, tier 3, or tier 6 project or the
22 end of the sixth year after the year in which the application was
23 submitted for a tier 2, tier 4, or tier 5 project, the Tax Commissioner
24 shall approve the application. For a tier 5 project that is sequential to
25 a tier 2 large data center project, the required level of investment
26 shall be met prior to the end of the fourth year after the expiration of
27 the tier 2 large data center project entitlement period relating to
28 direct sales tax refunds. The Tax Commissioner shall approve no more than
29 sixty million dollars in credits for any calendar year. Once such limit
30 is reached for the year, the Tax Commissioner may continue to approve
31 applications, but any agreement signed with respect to such an

1 application shall not include any credits as part of the allowed
2 incentives.

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

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

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

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

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

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

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

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

26 (8) A taxpayer and the Tax Commissioner may enter into agreements
27 for more than one project and may include more than one project in a
28 single agreement. The projects may be either sequential or concurrent. A
29 project may involve the same location as another project. No new
30 employment or new investment shall be included in more than one project
31 for either the meeting of the employment or investment requirements or

1 the creation of credits. When projects overlap and the plans do not
2 clearly specify, then the taxpayer shall specify in which project the
3 employment or investment belongs.

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

13 Sec. 5. Section 77-5725, Reissue Revised Statutes of Nebraska, is
14 amended to read:

15 77-5725 (1) Applicants may qualify for benefits under the Nebraska
16 Advantage Act in one of six tiers:

17 (a) Tier 1, investment in qualified property of at least one million
18 dollars and the hiring of at least ten new employees. There shall be no
19 new project applications for benefits under this tier filed after
20 December 31, 2026 ~~2020~~. All complete project applications filed on or
21 before December 31, 2026 ~~2020~~, shall be considered by the Tax
22 Commissioner and approved if the project and taxpayer qualify for
23 benefits. Agreements may be executed with regard to completed project
24 applications filed on or before December 31, 2026 ~~2020~~. All project
25 agreements pending, approved, or entered into before such date shall
26 continue in full force and effect;

27 (b) Tier 2, (i) investment in qualified property of at least three
28 million dollars and the hiring of at least thirty new employees or (ii)
29 for a large data center project, investment in qualified property for the
30 data center of at least two hundred million dollars and the hiring for
31 the data center of at least thirty new employees. There shall be no new

1 project applications for benefits under this tier filed after December
2 31, 2026 ~~2020~~. All complete project applications filed on or before
3 December 31, 2026 ~~2020~~, shall be considered by the Tax Commissioner and
4 approved if the project and taxpayer qualify for benefits. Agreements may
5 be executed with regard to completed project applications filed on or
6 before December 31, 2026 ~~2020~~. All project agreements pending, approved,
7 or entered into before such date shall continue in full force and effect;

8 (c) Tier 3, the hiring of at least thirty new employees. There shall
9 be no new project applications for benefits under this tier filed after
10 December 31, 2026 ~~2020~~. All complete project applications filed on or
11 before December 31, 2026 ~~2020~~, shall be considered by the Tax
12 Commissioner and approved if the project and taxpayer qualify for
13 benefits. Agreements may be executed with regard to completed project
14 applications filed on or before December 31, 2026 ~~2020~~. All project
15 agreements pending, approved, or entered into before such date shall
16 continue in full force and effect;

17 (d) Tier 4, investment in qualified property of at least ten million
18 dollars and the hiring of at least one hundred new employees. There shall
19 be no new project applications for benefits under this tier filed after
20 December 31, 2026 ~~2020~~. All complete project applications filed on or
21 before December 31, 2026 ~~2020~~, shall be considered by the Tax
22 Commissioner and approved if the project and taxpayer qualify for
23 benefits. Agreements may be executed with regard to completed project
24 applications filed on or before December 31, 2026 ~~2020~~. All project
25 agreements pending, approved, or entered into before such date shall
26 continue in full force and effect;

27 (e) Tier 5, (i) investment in qualified property of at least thirty
28 million dollars or (ii) for the production of electricity by using one or
29 more sources of renewable energy to produce electricity for sale as
30 described in subdivision (1)(j) of section 77-5715, investment in
31 qualified property of at least twenty million dollars. Failure to

1 maintain an average number of equivalent employees as defined in section
2 77-5727 greater than or equal to the number of equivalent employees in
3 the base year shall result in a partial recapture of benefits. There
4 shall be no new project applications for benefits under this tier filed
5 after December 31, ~~2026~~ 2020. All complete project applications filed on
6 or before December 31, ~~2026~~ 2020, shall be considered by the Tax
7 Commissioner and approved if the project and taxpayer qualify for
8 benefits. Agreements may be executed with regard to completed project
9 applications filed on or before December 31, ~~2026~~ 2020. All project
10 agreements pending, approved, or entered into before such date shall
11 continue in full force and effect; and

12 (f) Tier 6, investment in qualified property of at least ten million
13 dollars and the hiring of at least seventy-five new employees or the
14 investment in qualified property of at least one hundred million dollars
15 and the hiring of at least fifty new employees. There shall be no new
16 project applications for benefits under this tier filed after December
17 31, ~~2026~~ 2020. All complete project applications filed on or before
18 December 31, ~~2026~~ 2020, shall be considered by the Tax Commissioner and
19 approved if the project and taxpayer qualify for benefits. Agreements may
20 be executed with regard to completed project applications filed on or
21 before December 31, ~~2026~~ 2020. All project agreements pending, approved,
22 or entered into before such date shall continue in full force and effect.

23 (2) When the taxpayer has met the required levels of employment and
24 investment contained in the agreement for a tier 1, tier 2, tier 4, tier
25 5, or tier 6 project, the taxpayer shall be entitled to the following
26 incentives:

27 (a) A refund of all sales and use taxes for a tier 2, tier 4, tier
28 5, or tier 6 project or a refund of one-half of all sales and use taxes
29 for a tier 1 project paid under the Local Option Revenue Act, the
30 Nebraska Revenue Act of 1967, and sections 13-319, 13-324, and 13-2813
31 from the date of the application through the meeting of the required

1 levels of employment and investment for all purchases, including rentals,
2 of:

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

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

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

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

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

26 (b) A refund of all sales and use taxes for a tier 2, tier 4, tier
27 5, or tier 6 project or a refund of one-half of all sales and use taxes
28 for a tier 1 project paid under the Local Option Revenue Act, the
29 Nebraska Revenue Act of 1967, and sections 13-319, 13-324, and 13-2813 on
30 the types of purchases, including rentals, listed in subdivision (a) of
31 this subsection for such taxes paid during each year of the entitlement

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

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

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

28 ~~(b) Average wage of new employees means the average annual wage paid~~
29 ~~to employees during the year at the project who are not base-year~~
30 ~~employees and who are paid wages equal to at least sixty percent of the~~
31 ~~Nebraska average weekly wage for the year of application, excluding any~~

1 ~~compensation in excess of one million dollars paid to any one employee~~
2 ~~during the year; and~~

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

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

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

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

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

28 (8)(a) Property described in subdivisions (8)(c)(i) through (v) of
29 this section used in connection with a project or projects, whether
30 purchased or leased, and placed in service by the taxpayer after the date
31 the application was filed shall constitute separate classes of property

1 and are eligible for exemption under the conditions and for the time
2 periods provided in subdivision (8)(b) of this section.

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

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

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

29 (iv) A taxpayer who has a project for an Internet web portal or a
30 data center and who has met the required levels of employment and
31 investment for a tier 2 project or the required level of investment for a

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

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

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

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

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

30 (iii) Depreciable personal property used for a distribution
31 facility, including, but not limited to, storage racks, conveyor

1 mechanisms, forklifts, and other property used to store or move products;
2 (iv) Personal property which is business equipment located in a
3 single project if the business equipment is involved directly in the
4 manufacture or processing of agricultural products; and

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

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

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

25 (b) For tier 1, tier 2, tier 4, and tier 5 projects other than tier
26 5 projects described in subdivision (1)(e)(ii) of this section, beginning
27 October 1, 2006, and each October 1 thereafter, the average Producer
28 Price Index for all commodities, published by the United States
29 Department of Labor, Bureau of Labor Statistics, for the most recent
30 twelve available periods shall be divided by the Producer Price Index for
31 the first quarter of 2006 and the result multiplied by the applicable

1 investment threshold. The investment thresholds shall be adjusted for
2 cumulative inflation since 2006.

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

10 (d) For a tier 2 large data center project, beginning October 1,
11 2012, and each October 1 thereafter, the average Producer Price Index for
12 all commodities, published by the United States Department of Labor,
13 Bureau of Labor Statistics, for the most recent twelve available periods
14 shall be divided by the Producer Price Index for the first quarter of
15 2012 and the result multiplied by the applicable investment threshold.
16 The investment thresholds shall be adjusted for cumulative inflation
17 since 2012.

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

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

25 Sec. 6. Section 77-5726, Reissue Revised Statutes of Nebraska, is
26 amended to read:

27 77-5726 (1)(a) The credits prescribed in section 77-5725 for a year
28 shall be established by filing the forms required by the Tax Commissioner
29 with the income tax return for the taxable year which includes the end of
30 the year the credits were earned. The credits may be used and shall be
31 applied in the order in which they were first allowed. The credits may be

1 used after any other nonrefundable credits to reduce the taxpayer's
2 income tax liability imposed by sections 77-2714 to 77-27,135. Credits
3 may be used beginning with the taxable year which includes December 31 of
4 the year the required minimum levels were reached. The last year for
5 which credits may be used is the taxable year which includes December 31
6 of the last year of the carryover period. Any decision on how part of the
7 credit is applied shall not limit how the remaining credit could be
8 applied under this section.

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

28 For a tier 1, tier 2, tier 3, or tier 4 project, the amount of
29 credits used against income tax withholding shall not exceed the
30 withholding attributable to new employees employed at the project,
31 excluding any compensation in excess of one million dollars paid to any

1 one employee during the year.

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

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

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

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

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

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

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

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

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

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

20 (ii) The contract price; and

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

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

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

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

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

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

30 (4) A determination that a taxpayer is not engaged in a qualified
31 business or has failed to meet or maintain the required levels of

1 employment or investment for incentives, exemptions, or recapture may be
2 protested within sixty days after the mailing of the written notice of
3 the proposed determination. If the notice of proposed determination is
4 not protested within the sixty-day period, the proposed determination is
5 a final determination. If the notice is protested, the Tax Commissioner
6 shall issue a written order resolving such protests. The written order of
7 the Tax Commissioner resolving a protest may be appealed to the district
8 court of Lancaster County within thirty days after the issuance of the
9 order.

10 Sec. 7. (1) The Nebraska Advantage Deal-Closing Fund is created.
11 The fund shall be administered by the Department of Economic Development
12 and shall be used to provide grants to taxpayers who have a signed
13 agreement under the Nebraska Advantage Act and who have met the required
14 levels of employment and investment needed to qualify for incentives. The
15 Department of Revenue shall notify the Department of Economic Development
16 of each taxpayer that has met such requirements.

17 (2) Grants received under this section may be used for site and
18 building development, customized job-training, and capital investments
19 related to the taxpayer's project. The amount of each grant shall be
20 determined by the Department of Economic Development based upon available
21 funding and the likelihood of the grant proceeds leading to increased job
22 creation and investment in the state.

23 (3) The Department of Economic Development shall retain one-half of
24 one percent of all grants made under this section and shall use such
25 money for the administrative expenses related to carrying out the grant
26 program.

27 (4) It is the intent of the Legislature to appropriate forty million
28 dollars each fiscal year to the Nebraska Advantage Deal-Closing Fund for
29 purposes of this section.

30 (5) Any money in the Nebraska Advantage Deal-Closing Fund available
31 for investment shall be invested by the state investment officer pursuant

1 to the Nebraska Capital Expansion Act and the Nebraska State Funds
2 Investment Act.

3 (6) This section terminates on December 31, 2026.

4 Sec. 8. Section 77-5735, Reissue Revised Statutes of Nebraska, is
5 amended to read:

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

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

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

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

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

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

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

6 (7) The changes made in sections 77-5701, 77-5702, 77-5714, 77-5723,
7 77-5725, and 77-5726 by this legislative bill apply to all applications
8 filed on or after the effective date of this act. For all applications
9 filed prior to such date, the provisions of the Nebraska Advantage Act as
10 they existed immediately prior to such date apply.

11 Sec. 9. Original sections 77-5701, 77-5702, 77-5714, 77-5723,
12 77-5725, 77-5726, and 77-5735, Reissue Revised Statutes of Nebraska, are
13 repealed.