

AMENDMENTS TO LB595
(Amendments to E&R amendments, ER75)

Introduced by Flood, 19.

1 1. Strike section 12 and insert the following new sections:

2 Sec. 12. Section 77-5705, Reissue Revised Statutes of Nebraska, is
3 amended to read:

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

10 Sec. 13. Section 77-5723, Reissue Revised Statutes of Nebraska, is
11 amended to read:

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

16 (2) The application shall contain:

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

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

21 (c) If more than one location within this state is involved,
22 sufficient documentation to show that the employment and investment at
23 different locations are interdependent parts of the plan. A headquarters
24 shall be presumed to be interdependent with each other location directly
25 controlled by such headquarters. A showing that the parts of the plan
26 would be considered parts of a unitary business for corporate income tax

1 purposes shall not be sufficient to show interdependence for the purposes
2 of this subdivision;

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

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

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

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

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

1 shall be met prior to the end of the fourth year after the expiration of
2 the tier 2 large data center project entitlement period relating to
3 ~~direct~~ sales tax exemptions refunds.

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

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

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

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

31 (c) The documentation the taxpayer will need to supply when claiming

1 an incentive under the act;

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

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

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

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

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

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

14 Sec. 14. Section 77-5725, Revised Statutes Cumulative Supplement,
15 2020, is amended to read:

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

18 (a) Tier 1, investment in qualified property of at least one million
19 dollars and the hiring of at least ten new employees. There shall be no
20 new project applications for benefits under this tier filed after
21 December 31, 2020. All complete project applications filed on or before
22 December 31, 2020, shall be considered by the Tax Commissioner and
23 approved if the project and taxpayer qualify for benefits. Agreements may
24 be executed with regard to completed project applications filed on or
25 before December 31, 2020. All project agreements pending, approved, or
26 entered into before such date shall 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, 2020. All complete project applications filed on or before December
3 31, 2020, shall be considered by the Tax Commissioner and approved if the
4 project and taxpayer qualify for benefits. Agreements may be executed
5 with regard to completed project applications filed on or before December
6 31, 2020. All project agreements pending, approved, or entered into
7 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, 2020. All complete project applications filed on or before
11 December 31, 2020, shall be considered by the Tax Commissioner and
12 approved if the project and taxpayer qualify for benefits. Agreements may
13 be executed with regard to completed project applications filed on or
14 before December 31, 2020. All project agreements pending, approved, or
15 entered into before such date shall continue in full force and effect;

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

25 (e) Tier 5, (i) investment in qualified property of at least thirty
26 million dollars or (ii) for the production of electricity by using one or
27 more sources of renewable energy to produce electricity for sale as
28 described in subdivision (1)(j) of section 77-5715, investment in
29 qualified property of at least twenty million dollars. Failure to
30 maintain an average number of equivalent employees as defined in section
31 77-5727 greater than or equal to the number of equivalent employees in

1 the base year shall result in a partial recapture of benefits. There
2 shall be no new project applications for benefits under this tier filed
3 after December 31, 2020. All complete project applications filed on or
4 before December 31, 2020, shall be considered by the Tax Commissioner and
5 approved if the project and taxpayer qualify for benefits. Agreements may
6 be executed with regard to completed project applications filed on or
7 before December 31, 2020. All project agreements pending, approved, or
8 entered into before such date shall continue in full force and effect;
9 and

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

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

25 (a) A refund of all sales and use taxes for a tier 2, tier 4, tier
26 5, or tier 6 project or a refund of one-half of all sales and use taxes
27 for a tier 1 project paid under the Local Option Revenue Act, the
28 Nebraska Revenue Act of 1967, and sections 13-319, 13-324, 13-2813, and
29 77-6403 from the date of the application through the meeting of the
30 required levels of employment and investment for all purchases, including
31 rentals, of:

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

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

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

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

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

24 (b)(i) ~~(b)~~ A refund of all sales and use taxes for a ~~tier 2,~~ tier 4,
25 ~~tier 5,~~ or tier 6 project or a refund of one-half of all sales and use
26 taxes for a tier 1 project paid under the Local Option Revenue Act, the
27 Nebraska Revenue Act of 1967, and sections 13-319, 13-324, 13-2813, and
28 77-6403 on the types of purchases, including rentals, listed in
29 subdivision (a) of this subsection for such taxes paid during each year
30 of the entitlement period in which the taxpayer is at or above the
31 required levels of employment and investment; or -

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

12 (3) For agreements involving a tier 2 or tier 5 project:

13 (a) Within sixty days after the operative date of this section, any
14 taxpayer who meets the requirements of subsection (1) of section
15 77-2705.01 shall be issued a direct payment permit under section
16 77-2705.01, unless the taxpayer has opted out of this requirement. For
17 any taxpayer who is issued a direct payment permit, until such taxpayer
18 meets the required levels of employment and investment contained in the
19 agreement, the taxpayer must pay and remit any applicable sales and use
20 taxes as required by the Tax Commissioner. Any taxpayer who is issued a
21 direct payment permit under this subdivision shall comply with all data
22 disclosure requirements in subsection (5) of section 77-27,144; and

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

30 (4) ~~(3)~~ Any taxpayer who qualifies for a tier 1, tier 2, tier 3, or
31 tier 4 project shall be entitled to a credit equal to three percent times

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

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

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

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

31 (5) ~~(4)~~ Any taxpayer who qualifies for a tier 6 project shall be

1 entitled to a credit equal to ten percent times the total compensation
2 paid to all employees, other than base-year employees, excluding any
3 compensation in excess of one million dollars paid to any one employee
4 during the year, employed at the project.

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

14 ~~(7)~~ ~~(6)~~ The credits prescribed in subsections ~~(4)~~ ~~(3)~~, ~~(5)~~ ~~(4)~~, and
15 ~~(6)~~ ~~(5)~~ of this section shall be allowable for compensation paid and
16 investments made during each year of the entitlement period that the
17 taxpayer is at or above the required levels of employment and investment.

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

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

30 (b)(i) A taxpayer who has met the required levels of employment and
31 investment for a tier 4 project shall receive the exemption of property

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

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

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

27 (iv) A taxpayer who has a project for an Internet web portal or a
28 data center and who has met the required levels of employment and
29 investment for a tier 2 project or the required level of investment for a
30 tier 5 project, taking into account only the employment and investment at
31 the web portal or data center project, shall receive the exemption of

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

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

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

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

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

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

31 (iv) Personal property which is business equipment located in a

1 single project if the business equipment is involved directly in the
2 manufacture or processing of agricultural products; and

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

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

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

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

1 cumulative inflation since 2006.

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

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

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

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

24 Sec. 15. Section 77-5726, Revised Statutes Cumulative Supplement,
25 2020, is amended to read:

26 77-5726 (1)(a) The credits prescribed in section 77-5725 for a year
27 shall be established by filing the forms required by the Tax Commissioner
28 with the income tax return for the taxable year which includes the end of
29 the year the credits were earned. The credits may be used and shall be
30 applied in the order in which they were first allowed. The credits may be
31 used after any other nonrefundable credits to reduce the taxpayer's

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

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

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

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

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

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

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

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

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

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

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

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

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

18 (ii) The contract price; and

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

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

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

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

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

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

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

29 (4) A determination that a taxpayer is not engaged in a qualified
30 business or has failed to meet or maintain the required levels of
31 employment or investment for incentives, exemptions, or recapture may be

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

9 Sec. 16. Section 77-5727, Reissue Revised Statutes of Nebraska, is
10 amended to read:

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

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

25 (2) In the case of a taxpayer who has failed to maintain the project
26 at the required levels of employment or investment for the entire
27 entitlement period, any reduction in the personal property tax, any
28 refunds in tax or exemptions from tax allowed under subsection (2) of
29 section 77-5725, and any refunds or reduction in tax allowed because of
30 the use of a credit allowed under section 77-5725 shall be partially
31 recaptured from either the taxpayer or the owner of the improvement to

1 real estate and any carryovers of credits shall be partially disallowed.
2 The amount of the recapture shall be a percentage equal to the number of
3 years the taxpayer did not maintain the project at or above the required
4 levels of investment and employment divided by the number of years of the
5 project's entitlement period multiplied by the refunds and exemptions
6 allowed, reduction in personal property tax, the credits used, and the
7 remaining carryovers. In addition, the last remaining year of personal
8 property tax exemption shall be disallowed for each year the taxpayer did
9 not maintain such project at or above the required levels of employment
10 or investment.

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

27 (4) If the taxpayer receives any refund, exemption, refunds or
28 reduction in tax to which the taxpayer was not entitled or which was were
29 in excess of the amount to which the taxpayer was entitled, the refund,
30 exemption, or reduction in tax shall be recaptured separate from any
31 other recapture otherwise required by this section. Any amount recaptured

1 under this subsection shall be excluded from the amounts subject to
2 recapture under other subsections of this section.

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

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

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

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

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

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

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

8 Sec. 17. Section 77-5731, Reissue Revised Statutes of Nebraska, is
9 amended to read:

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

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

21 (3) The report shall also state, for taxpayers who are parties to
22 agreements, by industry group (a) the specific incentive options applied
23 for under the Nebraska Advantage Act, (b) the refunds and exemptions
24 allowed on the investment, (c) the credits earned, (d) the credits used
25 to reduce the corporate income tax and the credits used to reduce the
26 individual income tax, (e) the credits used to obtain sales and use tax
27 refunds, (f) the credits used against withholding liability, (g) the
28 number of jobs created under the act, (h) the expansion of capital
29 investment, (i) the estimated wage levels of jobs created under the act
30 subsequent to the application date, (j) the total number of qualified
31 applicants, (k) the projected future state revenue gains and losses, (l)

1 the sales tax refunds owed, (m) the credits outstanding under the act,
2 (n) the value of personal property exempted by class in each county under
3 the act, (o) the value of property for which payments equal to property
4 taxes paid were allowed in each county, and (p) the total amount of the
5 payments.

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

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

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

1 incentives which have been approved by the department, but not
2 necessarily received, during the previous two years.

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

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

18 Sec. 18. Section 77-5735, Reissue Revised Statutes of Nebraska, is
19 amended to read:

20 77-5735 (1) The changes made in sections 77-5703, 77-5708, 77-5712,
21 77-5714, 77-5715, 77-5723, 77-5725, 77-5726, 77-5727, and 77-5731 by Laws
22 2008, LB895, and sections 77-5707.01, 77-5719.01, and 77-5719.02 apply to
23 all applications filed on and after April 18, 2008. For all applications
24 filed prior to such date, the provisions of the Nebraska Advantage Act as
25 they existed immediately prior to such date apply.

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

1 election, the provisions of the Nebraska Advantage Act as they existed
2 immediately prior to July 15, 2010, apply to such application.

3 (3) The changes made in sections 77-5707, 77-5715, 77-5719, and
4 77-5725 by Laws 2010, LB918, apply to all applications filed on or after
5 July 15, 2010. For all applications filed prior to such date, the
6 provisions of the Nebraska Advantage Act as they existed immediately
7 prior to such date apply.

8 (4) The changes made in sections 77-5701, 77-5703, 77-5705, 77-5715,
9 77-5723, 77-5725, 77-5726, and 77-5727 by Laws 2012, LB1118, apply to all
10 applications filed on or after March 8, 2012. For all applications filed
11 prior to such date, the provisions of the Nebraska Advantage Act as they
12 existed immediately prior to such date apply.

13 (5) The changes made in sections 77-5707.01, 77-5709, 77-5712,
14 77-5719, 77-5720, 77-5723, and 77-5726 by Laws 2013, LB34, apply to all
15 applications filed on or after September 6, 2013. For all applications
16 filed prior to such date, the provisions of the Nebraska Advantage Act as
17 they existed immediately prior to such date apply.

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

20 (7) The changes made in sections 77-5705, 77-5723, 77-5725, 77-5726,
21 77-5727, and 77-5731 by this legislative bill apply to any agreement
22 entered into under the Nebraska Advantage Act that is still active on the
23 operative date of this section if the taxpayer makes a one-time election,
24 within the time period prescribed by the Tax Commissioner, to have such
25 changes apply to such taxpayer's agreement. In the absence of such an
26 election, the provisions of the Nebraska Advantage Act as they existed
27 immediately prior to the operative date of this section shall apply to
28 such agreement. For each election made under this subsection, the Tax
29 Commissioner shall disclose such election, the identity of the taxpayer,
30 and the location of the taxpayer's project to each municipality in which
31 the project is located. The Tax Commissioner shall make such disclosures

1 within thirty days after the election.

2 Sec. 19. Sections 2, 3, 4, 5, 6, 7, 8, 9, 11, and 21 of this act
3 become operative on October 1, 2021. Sections 12, 13, 14, 15, 16, 17, 18,
4 and 22 of this act become operative on January 1, 2023. The other
5 sections of this act become operative on their effective date.

6 Sec. 22. Original sections 77-5705, 77-5723, 77-5727, 77-5731, and
7 77-5735, Reissue Revised Statutes of Nebraska, and sections 77-5725 and
8 77-5726, Revised Statutes Cumulative Supplement, 2020, are repealed.

9 2. Renumber the remaining sections accordingly.