

AMENDMENTS TO LB502

(Amendments to Standing Committee amendments, AM1366)

Introduced by Flood, 19.

1 1. Strike amendments 1 and 2 and insert the following new amendment:

2 1. Strike the original sections and all amendments thereto and
3 insert the following new sections:

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

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

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

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

18 (2) The application shall contain:

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

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

23 (c) If more than one location within this state is involved,
24 sufficient documentation to show that the employment and investment at
25 different locations are interdependent parts of the plan. A headquarters
26 shall be presumed to be interdependent with each other location directly

1 controlled by such headquarters. A showing that the parts of the plan
2 would be considered parts of a unitary business for corporate income tax
3 purposes shall not be sufficient to show interdependence for the purposes
4 of this subdivision;

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

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

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

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

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

1 shall approve the application. For a tier 5 project that is sequential to
2 a tier 2 large data center project, the required level of investment
3 shall be met prior to the end of the fourth year after the expiration of
4 the tier 2 large data center project entitlement period relating to
5 ~~direct sales tax~~ exemptions refunds.

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

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

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

31 (b) The time period under the act in which the required levels must

1 be met;

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

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

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

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

29 (8) A taxpayer and the Tax Commissioner may enter into agreements
30 for more than one project and may include more than one project in a
31 single agreement. The projects may be either sequential or concurrent. A

1 project may involve the same location as another project. No new
2 employment or new investment shall be included in more than one project
3 for either the meeting of the employment or investment requirements or
4 the creation of credits. When projects overlap and the plans do not
5 clearly specify, then the taxpayer shall specify in which project the
6 employment or investment belongs.

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

16 Sec. 3. Section 77-5725, Revised Statutes Cumulative Supplement,
17 2020, is amended to read:

18 77-5725 (1) Applicants may qualify for benefits under the Nebraska
19 Advantage Act in one of six tiers:

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

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

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

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

18 (d) Tier 4, investment in qualified property of at least ten million
19 dollars and the hiring of at least one hundred new employees. There shall
20 be no 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 (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, 2020. All complete project applications filed on or
6 before December 31, 2020, shall be considered by the Tax Commissioner and
7 approved if the project and taxpayer qualify for benefits. Agreements may
8 be executed with regard to completed project applications filed on or
9 before December 31, 2020. All project agreements pending, approved, or
10 entered into before such date shall continue in full force and effect;
11 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, 2020. All complete project applications filed on or before December
18 31, 2020, shall be considered by the Tax Commissioner and approved if the
19 project and taxpayer qualify for benefits. Agreements may be executed
20 with regard to completed project applications filed on or before December
21 31, 2020. All project agreements pending, approved, or entered into
22 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, 13-2813, and
31 77-6403 from the date of the application through the meeting of the

1 required levels of employment and investment for all purchases, including
2 rentals, 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)(i) ~~(b)~~ A refund of all sales and use taxes for a tier 2, tier 4,
27 tier 5, or tier 6 project, excluding the tier 2 and tier 5 projects
28 described in subdivision (2)(b)(ii) of this section, or a refund of one-
29 half of all sales and use taxes for a tier 1 project paid under the Local
30 Option Revenue Act, the Nebraska Revenue Act of 1967, and sections
31 13-319, 13-324, 13-2813, and 77-6403 on the types of purchases, including

1 rentals, listed in subdivision (a) of this subsection for such taxes paid
2 during each year of the entitlement period in which the taxpayer is at or
3 above the required levels of employment and investment; or -

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

17 (3) For agreements involving a tier 2 large data center project or a
18 tier 5 project that is sequential to a tier 2 large data center project:

19 (a) Within sixty days after the operative date of this act, any
20 taxpayer who meets the requirements of subsection (1) of section
21 77-2705.01 shall be issued a direct payment permit under section
22 77-2705.01, unless the taxpayer has opted out of this requirement. For
23 any taxpayer who is issued a direct payment permit, until such taxpayer
24 meets the required levels of employment and investment contained in the
25 agreement, the taxpayer must pay and remit any applicable sales and use
26 taxes as required by the Tax Commissioner. Any taxpayer who is issued a
27 direct payment permit under this subdivision or who otherwise receives
28 the benefit of any refunds or exemptions under this section shall comply
29 with all data disclosure requirements in subsection (6) of section
30 77-27,144, including disclosures to a municipality which would have
31 received sales and use taxes but for an exemption allowed under this

1 section; and

2 (b) If the taxpayer meets the required levels of employment and
3 investment contained in the agreement, the taxpayer shall receive the
4 sales tax refunds described in subdivision (2)(a) of this section. For
5 any year in which the taxpayer is not at the required levels of
6 employment and investment, the taxpayer shall report all sales and use
7 taxes owed for the period on the taxpayer's tax return.

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

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

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

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

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

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

23 (7) ~~(6)~~ The credits prescribed in subsections (4) ~~(3)~~, (5) ~~(4)~~, and
24 (6) ~~(5)~~ of this section shall be allowable for compensation paid and
25 investments made during each year of the entitlement period that the
26 taxpayer is at or above the required levels of employment and investment.

27 (8) ~~(7)~~ The credit prescribed in subsection (6) ~~(5)~~ of this section
28 shall also be allowable during the first year of the entitlement period
29 for investment in qualified property at the project after the date of the
30 application and before the required levels of employment and investment
31 were met.

1 ~~(9)(a)~~ ~~(8)(a)~~ Property described in subdivisions ~~(9)(c)(i)~~ ~~(8)(c)(i)~~
2 through (v) of this section used in connection with a project or
3 projects, whether purchased or leased, and placed in service by the
4 taxpayer after the date the application was filed shall constitute
5 separate classes of property and are eligible for exemption under the
6 conditions and for the time periods provided in subdivision ~~(9)(b)~~ ~~(8)(b)~~
7 of this section.

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

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

26 (iii) A taxpayer who has filed an application that describes a tier
27 2 large data center project or a tier 5 project that is sequential to a
28 tier 2 large data center project for which the entitlement period has
29 expired shall receive the exemption of all property in subdivision ~~(9)(c)~~
30 ~~(8)(c)~~ of this section beginning any January 1 after the date the
31 property was placed in service. Such property shall be eligible for

1 exemption from the tax on personal property from the January 1 preceding
2 the first claim for exemption approved under this subdivision through the
3 ninth December 31 after the year the first claim for exemption is
4 approved.

5 (iv) A taxpayer who has a project for an Internet web portal or a
6 data center and who has met the required levels of employment and
7 investment for a tier 2 project or the required level of investment for a
8 tier 5 project, taking into account only the employment and investment at
9 the web portal or data center project, shall receive the exemption of
10 property in subdivision (9)(c)(ii) ~~(8)(c)(ii)~~ of this section. Such
11 property shall be eligible for the exemption from the first January 1
12 following the end of the year during which the required levels were
13 exceeded through the ninth December 31 after the first year any property
14 included in subdivisions (9)(c)(ii) ~~(8)(c)(ii)~~, (iii), (iv), and (v) of
15 this section qualifies for the exemption.

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

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

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

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

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

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

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

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

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

28 ~~(10)(a)~~ ~~(9)(a)~~ The investment thresholds in this section for a
29 particular year of application shall be adjusted by the method provided
30 in this subsection, except that the investment threshold for a tier 5
31 project described in subdivision (1)(e)(ii) of this section shall not be

1 adjusted.

2 (b) For tier 1, tier 2, tier 4, and tier 5 projects other than tier
3 5 projects described in subdivision (1)(e)(ii) of this section, beginning
4 October 1, 2006, and each October 1 thereafter, the average Producer
5 Price Index for all commodities, published by the United States
6 Department of Labor, Bureau of Labor Statistics, for the most recent
7 twelve available periods shall be divided by the Producer Price Index for
8 the first quarter of 2006 and the result multiplied by the applicable
9 investment threshold. The investment thresholds shall be adjusted for
10 cumulative inflation since 2006.

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

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

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

29 (f) The investment thresholds established by this subsection apply
30 for purposes of project qualifications for all applications filed on or
31 after January 1 of the following year for all years of the project.

1 Adjustments do not apply to projects after the year of application.

2 Sec. 4. Section 77-5726, Revised Statutes Cumulative Supplement,
3 2020, is amended to read:

4 77-5726 (1)(a) The credits prescribed in section 77-5725 for a year
5 shall be established by filing the forms required by the Tax Commissioner
6 with the income tax return for the taxable year which includes the end of
7 the year the credits were earned. The credits may be used and shall be
8 applied in the order in which they were first allowed. The credits may be
9 used after any other nonrefundable credits to reduce the taxpayer's
10 income tax liability imposed by sections 77-2714 to 77-27,135. Credits
11 may be used beginning with the taxable year which includes December 31 of
12 the year the required minimum levels were reached. The last year for
13 which credits may be used is the taxable year which includes December 31
14 of the last year of the carryover period. Any decision on how part of the
15 credit is applied shall not limit how the remaining credit could be
16 applied under this section.

17 (b) The taxpayer may use the credit provided in subsection (4) ~~(3)~~
18 of section 77-5725 to reduce the taxpayer's income tax withholding
19 employer or payor tax liability under section 77-2756 or 77-2757 to the
20 extent such liability is attributable to the number of new employees at
21 the project, excluding any compensation in excess of one million dollars
22 paid to any one employee during the year. The taxpayer may use the credit
23 provided in subsection (5) ~~(4)~~ of section 77-5725 to reduce the
24 taxpayer's income tax withholding employer or payor tax liability under
25 section 77-2756 or 77-2757 to the extent such liability is attributable
26 to all employees employed at the project, other than base-year employees
27 and excluding any compensation in excess of one million dollars paid to
28 any one employee during the year. To the extent of the credit used, such
29 withholding shall not constitute public funds or state tax revenue and
30 shall not constitute a trust fund or be owned by the state. The use by
31 the taxpayer of the credit shall not change the amount that otherwise

1 would be reported by the taxpayer to the employee under section 77-2754
2 as income tax withheld and shall not reduce the amount that otherwise
3 would be allowed by the state as a refundable credit on an employee's
4 income tax return as income tax withheld under section 77-2755.

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

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

15 If the amount of credit used by the taxpayer against income tax
16 withholding exceeds this amount, the excess withholding shall be returned
17 to the Department of Revenue in the manner provided in section 77-2756,
18 such excess amount returned shall be considered unused, and the amount of
19 unused credits may be used as otherwise permitted in this section or
20 shall carry over to the extent authorized in subdivision (1)(e) of this
21 section.

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

28 (d) The credits earned for a tier 6 project may be used to obtain a
29 payment from the state equal to the real property taxes due after the
30 year the required levels of employment and investment were met and before
31 the end of the carryover period, for real property that is included in

1 such project and acquired by the taxpayer, whether by lease or purchase,
2 after the date the application was filed. Once the required levels of
3 employment and investment for a tier 2 large data center project have
4 been met, the credits earned for a tier 2 large data center project may
5 be used to obtain a payment from the state equal to the real property
6 taxes due after the year of application and before the end of the
7 carryover period, for real property that is included in such project and
8 acquired by the taxpayer, whether by lease or purchase, after the date
9 the application was filed. The payment from the state shall be made only
10 after payment of the real property taxes have been made to the county as
11 required by law. Payments shall not be allowed for any taxes paid on real
12 property for which the taxes are divided under section 18-2147 or 58-507.

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

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

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

24 (c) Refund claims for materials purchased by a purchasing agent
25 shall include:

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

27 (ii) The contract price; and

28 (iii)(A) For refunds under subdivision (2)(a)(iii) or (2)(a)(v) of
29 section 77-5725, a certification by the contractor or repairperson of the
30 percentage of the materials incorporated into or annexed to the project
31 on which sales and use taxes were paid to Nebraska after appointment as

1 purchasing agent; or

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

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

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

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

30 (3) The appointment of purchasing agents shall be recognized for the
31 purpose of changing the status of a contractor or repairperson as the

1 ultimate consumer of tangible personal property purchased after the date
2 of the appointment which is physically incorporated into or annexed to
3 the project and becomes the property of the owner of the improvement to
4 real estate or the taxpayer. The purchasing agent shall be jointly liable
5 for the payment of the sales and use tax on the purchases with the owner
6 of the property.

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

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

20 77-5727 (1)(a) If the taxpayer fails either to meet the required
21 levels of employment or investment for the applicable project by the end
22 of the fourth year after the end of the year the application was
23 submitted for a tier 1, tier 3, or tier 6 project or by the end of the
24 sixth year after the end of the year the application was submitted for a
25 tier 2, tier 4, or tier 5 project or to utilize such project in a
26 qualified business at employment and investment levels at or above those
27 required in the agreement for the entire entitlement period, all or a
28 portion of the incentives set forth in the Nebraska Advantage Act shall
29 be recaptured or disallowed.

30 (b) In the case of a taxpayer who has failed to meet the required
31 levels of investment or employment within the required time period, all

1 reduction in the personal property tax because of the act shall be
2 recaptured.

3 (2) In the case of a taxpayer who has failed to maintain the project
4 at the required levels of employment or investment for the entire
5 entitlement period, any reduction in the personal property tax, any
6 refunds in tax or exemptions from tax allowed under subsection (2) of
7 section 77-5725, and any refunds or reduction in tax allowed because of
8 the use of a credit allowed under section 77-5725 shall be partially
9 recaptured from either the taxpayer or the owner of the improvement to
10 real estate and any carryovers of credits shall be partially disallowed.
11 The amount of the recapture shall be a percentage equal to the number of
12 years the taxpayer did not maintain the project at or above the required
13 levels of investment and employment divided by the number of years of the
14 project's entitlement period multiplied by the refunds and exemptions
15 allowed, reduction in personal property tax, the credits used, and the
16 remaining carryovers. In addition, the last remaining year of personal
17 property tax exemption shall be disallowed for each year the taxpayer did
18 not maintain such project at or above the required levels of employment
19 or investment.

20 (3) In the case of a taxpayer qualified under tier 5 who has failed
21 to maintain the average number of equivalent employees at the project at
22 the end of the six years following the year the taxpayer attained the
23 required amount of investment, any refunds or exemptions in tax allowed
24 under subsection (2) of section 77-5725 or any reduction in the personal
25 property tax under section 77-5725 shall be partially recaptured from the
26 taxpayer. The amount of recapture shall be the total amount of refunds,
27 exemptions, and reductions in tax allowed for all years times the
28 reduction in the average number of equivalent employees employed at the
29 end of the entitlement period from the number of equivalent employees
30 employed in the base year divided by the number of equivalent employees
31 employed in the base year. For purposes of this subsection, the average

1 number of equivalent employees shall be calculated at the end of the
2 entitlement period by adding the number of equivalent employees in the
3 year the taxpayer attains the required level of investment and each of
4 the next following six years and dividing the result by seven.

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

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

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

24 (b) For a tier 2 large data center project, any personal property
25 tax that would have been due except for the exemption under the Nebraska
26 Advantage Act, together with interest at the rate provided in section
27 45-104.01 from the original delinquency date of the tax that would have
28 been due until the date paid, to the extent it becomes due under this
29 section, shall be considered delinquent and shall be immediately payable
30 to the county or counties in which the property was located when
31 exempted.

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

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

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

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

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

19 77-5731 (1) The Tax Commissioner shall submit electronically an
20 annual report to the Legislature no later than July 15 of each year. The
21 Department of Revenue shall, on or before September 1 of each year,
22 appear at a joint hearing of the Appropriations Committee of the
23 Legislature and the Revenue Committee of the Legislature and present the
24 report. Any supplemental information requested by three or more committee
25 members shall be presented within thirty days after the request.

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

30 (3) The report shall also state, for taxpayers who are parties to
31 agreements, by industry group (a) the specific incentive options applied

1 for under the Nebraska Advantage Act, (b) the refunds and exemptions
2 allowed on the investment, (c) the credits earned, (d) the credits used
3 to reduce the corporate income tax and the credits used to reduce the
4 individual income tax, (e) the credits used to obtain sales and use tax
5 refunds, (f) the credits used against withholding liability, (g) the
6 number of jobs created under the act, (h) the expansion of capital
7 investment, (i) the estimated wage levels of jobs created under the act
8 subsequent to the application date, (j) the total number of qualified
9 applicants, (k) the projected future state revenue gains and losses, (l)
10 the sales tax refunds owed, (m) the credits outstanding under the act,
11 (n) the value of personal property exempted by class in each county under
12 the act, (o) the value of property for which payments equal to property
13 taxes paid were allowed in each county, and (p) the total amount of the
14 payments.

15 (4) In estimating the projected future state revenue gains and
16 losses, the report shall detail the methodology utilized, state the
17 economic multipliers and industry multipliers used to determine the
18 amount of economic growth and positive tax revenue, describe the analysis
19 used to determine the percentage of new jobs attributable to the Nebraska
20 Advantage Act assumption, and identify limitations that are inherent in
21 the analysis method.

22 (5) The report shall provide an explanation of the audit and review
23 processes of the department in approving and rejecting applications or
24 the grant of incentives and in enforcing incentive recapture. The report
25 shall also specify the median period of time between the date of
26 application and the date the agreement is executed for all agreements
27 executed by December 31 of the prior year.

28 (6) The report shall provide information on project-specific total
29 incentives used every two years for each approved project. The report
30 shall disclose (a) the identity of the taxpayer, (b) the location of the
31 project, and (c) the total credits used, exemptions used, and refunds

1 approved during the immediately preceding two years expressed as a
2 single, aggregated total. The incentive information required to be
3 reported under this subsection shall not be reported for the first year
4 the taxpayer attains the required employment and investment thresholds.
5 The information on first-year incentives used shall be combined with and
6 reported as part of the second year. Thereafter, the information on
7 incentives used for succeeding years shall be reported for each project
8 every two years containing information on two years of credits used,
9 exemptions used, and refunds approved. The incentives used shall include
10 incentives which have been approved by the department, but not
11 necessarily received, during the previous two years.

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

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

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

29 77-5735 (1) The changes made in sections 77-5703, 77-5708, 77-5712,
30 77-5714, 77-5715, 77-5723, 77-5725, 77-5726, 77-5727, and 77-5731 by Laws
31 2008, LB895, and sections 77-5707.01, 77-5719.01, and 77-5719.02 apply to

1 all applications filed on and after April 18, 2008. 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 (2) The changes made in sections 77-5725 and 77-5726 by Laws 2010,
5 LB879, apply to all applications filed on or after July 15, 2010. For all
6 applications filed prior to such date, the taxpayer may make a one-time
7 election, within the time period prescribed by the Tax Commissioner, to
8 have the changes made in sections 77-5725 and 77-5726 by Laws 2010,
9 LB879, apply to such taxpayer's application, or in the absence of such an
10 election, the provisions of the Nebraska Advantage Act as they existed
11 immediately prior to July 15, 2010, apply to such application.

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

17 (4) The changes made in sections 77-5701, 77-5703, 77-5705, 77-5715,
18 77-5723, 77-5725, 77-5726, and 77-5727 by Laws 2012, LB1118, apply to all
19 applications filed on or after March 8, 2012. For all applications filed
20 prior to such date, the provisions of the Nebraska Advantage Act as they
21 existed immediately prior to such date apply.

22 (5) The changes made in sections 77-5707.01, 77-5709, 77-5712,
23 77-5719, 77-5720, 77-5723, and 77-5726 by Laws 2013, LB34, apply to all
24 applications filed on or after September 6, 2013. For all applications
25 filed prior to such date, the provisions of the Nebraska Advantage Act as
26 they existed immediately prior to such date apply.

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

29 (7) The changes made in sections 77-5705, 77-5723, 77-5725, 77-5726,
30 77-5727, and 77-5731 by this legislative bill apply to any agreement
31 entered into under the Nebraska Advantage Act that is still active on the

1 operative date of this act if the taxpayer makes a one-time election,
2 within the time period prescribed by the Tax Commissioner, to have such
3 changes apply to such taxpayer's agreement. In the absence of such an
4 election, the provisions of the Nebraska Advantage Act as they existed
5 immediately prior to the operative date of this act shall apply to such
6 agreement. For each election made under this subsection, the Tax
7 Commissioner shall disclose such election, the identity of the taxpayer,
8 and the location of the taxpayer's project to each municipality in which
9 the project is located. The Tax Commissioner shall make such disclosures
10 within thirty days after the election.

11 Sec. 8. This act becomes operative on January 1, 2023.

12 Sec. 9. Original sections 77-5705, 77-5723, 77-5727, 77-5731, and
13 77-5735, Reissue Revised Statutes of Nebraska, and sections 77-5725 and
14 77-5726, Revised Statutes Cumulative Supplement, 2020, are repealed.