

LEGISLATURE OF NEBRASKA
ONE HUNDRED FIFTH LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 996

Introduced by Crawford, 45; Watermeier, 1.

Read first time January 11, 2018

Committee: Revenue

- 1 A BILL FOR AN ACT relating to revenue and taxation; to amend sections
- 2 77-5714 and 77-5719.01, Reissue Revised Statutes of Nebraska,
- 3 sections 77-5709 and 77-5727, Revised Statutes Cumulative
- 4 Supplement, 2016, and sections 77-5725, 77-5726, and 77-5735,
- 5 Revised Statutes Supplement, 2017; to redefine terms; to change the
- 6 Nebraska Advantage Act as prescribed; to harmonize provisions; and
- 7 to repeal the original sections.
- 8 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 77-5709, Revised Statutes Cumulative Supplement,
2 2016, is amended to read:

3 77-5709 Established employee means an individual who is employed in
4 Nebraska and is subject to the Nebraska income tax on compensation
5 received from the taxpayer or its predecessors ~~Equivalent employees means~~
6 ~~the number of employees computed by dividing the total hours paid in a~~
7 ~~year by the product of forty times the number of weeks in a year. A~~
8 ~~salaried employee who receives a predetermined amount of compensation~~
9 ~~each pay period on a weekly or less frequent basis is deemed to have been~~
10 ~~paid for forty hours per week during the pay period.~~

11 Sec. 2. Section 77-5714, Reissue Revised Statutes of Nebraska, is
12 amended to read:

13 77-5714 (1) Number of new employees, for a tier 1, tier 2, tier 3,
14 or tier 4 project, means the number of established ~~equivalent~~ employees
15 that are employed at the project during a year that are in excess of the
16 number of established ~~equivalent~~ employees during the base year, not to
17 exceed the number of established ~~equivalent~~ employees employed at the
18 project during a year who are not base-year employees and who are each
19 paid wages at a rate equal to at least one hundred ten sixty percent of
20 the county Nebraska average weekly wage for the year of application for
21 the county in which the project is located. If the project is located in
22 more than one county, the higher county average weekly wage shall apply.

23 (2) Number of new employees, for a tier 6 project, means the number
24 of established ~~equivalent~~ employees that are employed at the project
25 during a year that are in excess of the number of established ~~equivalent~~
26 employees during the base year, not to exceed the number of established
27 ~~equivalent~~ employees employed at the project during a year who are not
28 base-year employees and who are each paid at a rate equal to or greater
29 than the tier 6 weekly required compensation for the year of application.

30 (3) Teleworkers working for wages or salaries in Nebraska from their
31 residences for a taxpayer on tasks interdependent with the work performed

1 at the project shall be considered to be employed at the project.

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

5 Sec. 3. Section 77-5719.01, Reissue Revised Statutes of Nebraska, is
6 amended to read:

7 77-5719.01 Tier 6 weekly required compensation means two hundred
8 percent of the county average weekly wage for the county in which the
9 project is located or one hundred fifty percent of the Nebraska state
10 average weekly wage, whichever is higher. If the project is located in
11 more than one county, the higher county average weekly wage shall be used
12 to determine the tier 6 weekly required compensation.

13 Sec. 4. Section 77-5725, Revised Statutes Supplement, 2017, is
14 amended to read:

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

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

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

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

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

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

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

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

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

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

24 (a) A refund of all sales and use taxes for a tier 2, tier 4, tier
25 5, or tier 6 project or a refund of one-half of all sales and use taxes
26 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, and 13-2813
28 from the date of the application through the meeting of the required
29 levels of employment and investment for all purchases, including rentals,
30 of:

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

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

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

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

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

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

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

1 4 project shall be entitled to a credit equal to three percent times the
2 average wage of new employees times the number of new employees if the
3 average wage of the new employees equals at least one hundred ten sixty
4 percent of the county Nebraska average weekly annual wage for the year of
5 application for the county in which the project is located. If the
6 project is located in more than one county, the higher county average
7 weekly wage shall apply. The credit shall equal four percent times the
8 average wage of new employees times the number of new employees if the
9 average wage of the new employees equals at least one hundred twenty-five
10 seventy-five percent of the county Nebraska average weekly annual wage
11 for the year of application for the county in which the project is
12 located. If the project is located in more than one county, the higher
13 county average weekly wage shall apply. The credit shall equal five
14 percent times the average wage of new employees times the number of new
15 employees if the average wage of the new employees equals at least one
16 hundred fifty percent of the county Nebraska average weekly annual wage
17 for the year of application for the county in which the project is
18 located. If the project is located in more than one county, the higher
19 county average weekly wage shall apply. The credit shall equal six
20 percent times the average wage of new employees times the number of new
21 employees if the average wage of the new employees equals at least one
22 hundred seventy-five ~~twenty-five~~ percent of the county Nebraska average
23 weekly annual wage for the year of application for the county in which
24 the project is located. If the project is located in more than one
25 county, the higher county average weekly wage shall apply. For
26 computation of such credit:

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

1 ~~during the year, divided by the number of equivalent employees making up~~
2 ~~such total compensation;~~

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

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

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

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

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

29 (7) The credit prescribed in subsection (5) of this section shall
30 also be allowable during the first year of the entitlement period for
31 investment in qualified property at the project after the date of the

1 application and before the required levels of employment and investment
2 were met.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

31 (b) For tier 1, tier 2, tier 4, and tier 5 projects other than tier

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

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

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

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

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

31 Sec. 5. Section 77-5726, Revised Statutes Supplement, 2017, is

1 amended to read:

2 77-5726 (1)(a) The credits prescribed in section 77-5725 for a year
3 shall be established by filing the forms required by the Tax Commissioner
4 with the income tax return for the taxable year which includes the end of
5 the year the credits were earned. The credits may be used and shall be
6 applied in the order in which they were first allowed. The credits may be
7 used after any other nonrefundable credits to reduce the taxpayer's
8 income tax liability imposed by sections 77-2714 to 77-27,135. Credits
9 may be used beginning with the taxable year which includes December 31 of
10 the year the required minimum levels were reached. The last year for
11 which credits may be used is the taxable year which includes December 31
12 of the last year of the carryover period. Any decision on how part of the
13 credit is applied shall not limit how the remaining credit could be
14 applied under this section.

15 (b)(i) Subject to the limitations provided in subdivision (1)(b)(ii)
16 of this section, the ~~(b)~~The taxpayer may use the credit provided in
17 subsection (3) of section 77-5725 to reduce the taxpayer's income tax
18 withholding employer or payor tax liability under section 77-2756 or
19 77-2757 to the extent such liability is attributable to the number of new
20 employees at the project, excluding any compensation in excess of one
21 million dollars paid to any one employee during the year. Subject to the
22 limitations provided in subdivision (1)(b)(iii) of this section, the The
23 taxpayer may use the credit provided in subsection (4) of section 77-5725
24 to reduce the taxpayer's income tax withholding employer or payor tax
25 liability under section 77-2756 or 77-2757 to the extent such liability
26 is attributable to all employees employed at the project, other than
27 base-year employees and excluding any compensation in excess of one
28 million dollars paid to any one employee during the year. To the extent
29 of the credit used, such withholding shall not constitute public funds or
30 state tax revenue and shall not constitute a trust fund or be owned by
31 the state. The use by the taxpayer of the credit shall not change the

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

6 (ii) For a tier 1, tier 2, tier 3, or tier 4 project, the amount of
7 credits used against income tax withholding pursuant to subdivision (1)
8 (b)(i) of this section shall be limited as follows:

9 (A) For the first three years of the entitlement period, the amount
10 of credits used against income tax withholding shall not exceed one
11 hundred percent of the withholding attributable to new employees employed
12 at the project, excluding any compensation in excess of one million
13 dollars paid to any one employee during the year; -

14 (B) For years four and five of the entitlement period, the amount of
15 credits used against income tax withholding shall not exceed fifty
16 percent of the withholding attributable to new employees employed at the
17 project, excluding any compensation in excess of one million dollars paid
18 to any one employee during the year; and

19 (C) For years six and seven of the entitlement period and any year
20 thereafter, the taxpayer shall not be allowed to use credits against
21 income tax withholding.

22 (iii) For a tier 6 project, the amount of credits used against
23 income tax withholding pursuant to subdivision (1)(b)(i) of this section
24 shall be limited as follows:

25 (A) For the first three years of the entitlement period, the amount
26 of credits used against income tax withholding shall not exceed one
27 hundred percent of the withholding attributable to all employees employed
28 at the project, other than base-year employees and excluding any
29 compensation in excess of one million dollars paid to any one employee
30 during the year; -

31 (B) For years four and five of the entitlement period, the amount of

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

6 (C) For years six and seven of the entitlement period and any year
7 thereafter, the taxpayer shall not be allowed to use credits against
8 income tax withholding.

9 (iv) If the amount of credit used by the taxpayer against income tax
10 withholding exceeds the this amount allowed under subdivision (1)(b)(ii)
11 or (iii) of this section, whichever is applicable, the excess withholding
12 shall be returned to the Department of Revenue in the manner provided in
13 section 77-2756, such excess amount returned shall be considered unused,
14 and the amount of unused credits may be used as otherwise permitted in
15 this section or shall carry over to the extent authorized in subdivision
16 (1)(e) of this section.

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

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

1 taxes due after the year of application and before the end of the
2 carryover period, for real property that is included in such project and
3 acquired by the taxpayer, whether by lease or purchase, after the date
4 the application was filed. The payment from the state shall be made only
5 after payment of the real property taxes have been made to the county as
6 required by law. Payments shall not be allowed for any taxes paid on real
7 property for which the taxes are divided under section 18-2147 or 58-507.

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

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

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

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

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

22 (ii) The contract price; and

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

28 (B) For refunds under subdivision (2)(a)(iv) of section 77-5725, a
29 certification by the contractor or repairperson of the percentage of the
30 contract price that represents the cost of materials annexed to the
31 project and the percentage of the materials annexed to the project on

1 which sales and use taxes were paid to Nebraska after appointment as
2 purchasing agent.

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

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

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

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

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

12 Sec. 6. Section 77-5727, Revised Statutes Cumulative Supplement,
13 2016, is amended to read:

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

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

28 (2) In the case of a taxpayer who has failed to maintain the project
29 at the required levels of employment or investment for the entire
30 entitlement period, any reduction in the personal property tax, any
31 refunds in tax allowed under subsection (2) of section 77-5725, and any

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

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

30 (4) If the taxpayer receives any refunds or reduction in tax to
31 which the taxpayer was not entitled or which were in excess of the amount

1 to which the taxpayer was entitled, the refund or reduction in tax shall
2 be recaptured separate from any other recapture otherwise required by
3 this section. Any amount recaptured under this subsection shall be
4 excluded from the amounts subject to recapture under other subsections of
5 this section.

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

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

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

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

31 (7) Notwithstanding any other limitations contained in the laws of

1 this state, collection of any taxes deemed to be underpayments by this
2 section shall be allowed for a period of three years after the end of the
3 entitlement period.

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

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

11 Sec. 7. Section 77-5735, Revised Statutes Supplement, 2017, is
12 amended to read:

13 77-5735 (1) The changes made in sections 77-5703, 77-5708, 77-5712,
14 77-5714, 77-5715, 77-5723, 77-5725, 77-5726, 77-5727, and 77-5731 by Laws
15 2008, LB895, and sections 77-5707.01, 77-5719.01, and 77-5719.02 apply to
16 all applications filed on and after April 18, 2008. For all applications
17 filed prior to such date, the provisions of the Nebraska Advantage Act as
18 they existed immediately prior to such date apply.

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

27 (3) The changes made in sections 77-5707, 77-5715, 77-5719, and
28 77-5725 by Laws 2010, LB918, apply to all applications filed on or after
29 July 15, 2010. For all applications filed prior to such date, the
30 provisions of the Nebraska Advantage Act as they existed immediately
31 prior to such date apply.

1 (4) The changes made in sections 77-5701, 77-5703, 77-5705, 77-5715,
2 77-5723, 77-5725, 77-5726, and 77-5727 by Laws 2012, LB1118, apply to all
3 applications filed on or after March 8, 2012. For all applications filed
4 prior to such date, the provisions of the Nebraska Advantage Act as they
5 existed immediately prior to such date apply.

6 (5) The changes made in sections 77-5707.01, 77-5709, 77-5712,
7 77-5719, 77-5720, 77-5723, and 77-5726 by Laws 2013, LB34, apply to all
8 applications filed on or after September 6, 2013. For all applications
9 filed prior to such date, the provisions of the Nebraska Advantage Act as
10 they existed immediately prior to such date apply.

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

13 (7) The changes made in sections 77-5709, 77-5714, 77-5719.01,
14 77-5725, 77-5726, and 77-5727 by this legislative bill apply to all
15 applications filed on or after the effective date of this act. For all
16 applications filed prior to such date, the provisions of the Nebraska
17 Advantage Act as they existed immediately prior to such date apply.

18 Sec. 8. Original sections 77-5714 and 77-5719.01, Reissue Revised
19 Statutes of Nebraska, sections 77-5709 and 77-5727, Revised Statutes
20 Cumulative Supplement, 2016, and sections 77-5725, 77-5726, and 77-5735,
21 Revised Statutes Supplement, 2017, are repealed.