

AMENDMENTS TO LB1150

Introduced by Revenue.

1 1. Strike the original sections and insert the following new
2 sections:

3 Section 1. Section 77-376, Reissue Revised Statutes of Nebraska, is
4 amended to read:

5 77-376 (1) The Tax Commissioner may examine or cause to be examined
6 in his or her behalf, and make memoranda from, any of the financial
7 records of state and local subdivisions, persons, and corporations
8 subject to the tax laws of this state, including the social security
9 numbers of employees of such state and local subdivisions, persons, and
10 corporations. No information shall be released that is not so authorized
11 by existing statutes. Unless otherwise prohibited by law, the Tax
12 Commissioner may share the information examined with the taxing or law
13 enforcement authorities of this state, other states, and the federal
14 government.

15 (2) The audit and examination selection criteria and standards, the
16 discovery techniques, the design of technological systems to detect fraud
17 and inconsistencies, and all other techniques utilized by the Department
18 of Revenue to discover fraud, misstatements, inconsistencies,
19 underreporting, and tax avoidance shall be confidential information. The
20 department may disclose this information to certain persons to further
21 its enforcement activities and as provided under section 50-1213, but
22 such limited disclosure shall not change the confidential nature of the
23 information.

24 Sec. 2. Section 77-27,195, Reissue Revised Statutes of Nebraska, is
25 amended to read:

26 77-27,195 (1) The Tax Commissioner shall prepare a report
27 identifying the amount of investment in this state and the number of

1 equivalent jobs created by each taxpayer claiming a credit pursuant to
2 the Nebraska Advantage Rural Development Act. The report shall include
3 the amount of credits claimed in the aggregate. The report shall be
4 issued on or before October 31 ~~July 15~~ of each year for all credits
5 allowed during the previous fiscal calendar year. The report shall be on
6 a fiscal year, accrual basis that satisfies the requirements set by the
7 Governmental Accounting Standards Board. The Department of Revenue shall,
8 on or before December 15 ~~September 1~~ of each even-numbered year, appear
9 at a joint hearing of the Appropriations Committee of the Legislature and
10 the Revenue Committee of the Legislature and present the report. Any
11 supplemental information requested by three or more committee members
12 shall be presented within thirty days after the request.

13 (2) Beginning with applications filed on or after January 1, 2006,
14 except for livestock modernization or expansion projects, the report
15 shall provide information on project-specific total incentives used every
16 two years for each approved project and shall disclose (a) the identity
17 of the taxpayer, (b) the location of the project, and (c) the total
18 credits used and refunds approved during the immediately preceding two
19 years expressed as a single, aggregated total. The incentive information
20 required to be reported under this subsection shall not be reported for
21 the first year the taxpayer attains the required employment and
22 investment thresholds. The information on first-year incentives used
23 shall be combined with and reported as part of the second year.
24 Thereafter, the information on incentives used for succeeding years shall
25 be reported for each project every two years containing information on
26 two years of credits used and refunds approved. The incentives used shall
27 include incentives which have been approved by the Department of Revenue,
28 but not necessarily received, during the previous two fiscal calendar
29 years.

30 (3) For livestock modernization or expansion projects, the report
31 shall disclose (a) the identity of the taxpayer, (b) the total credits

1 used and refunds approved during the preceding fiscal calendar year, and
2 (c) the location of the project.

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

5 Sec. 3. Section 77-4110, Reissue Revised Statutes of Nebraska, is
6 amended to read:

7 77-4110 (1) The Tax Commissioner shall submit electronically an
8 annual report to the Legislature no later than October 31 ~~July 15~~ of each
9 year. The report shall be on a fiscal year, accrual basis that satisfies
10 the requirements set by the Governmental Accounting Standards Board. The
11 Department of Revenue shall, on or before December 15 ~~September 1~~ of each
12 even-numbered year, appear at a joint hearing of the Appropriations
13 Committee of the Legislature and the Revenue Committee of the Legislature
14 and present the report. Any supplemental information requested by three
15 or more committee members shall be presented within thirty days after the
16 request.

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

21 (3) The report shall also state by industry group (a) the specific
22 incentive options applied for under the Employment and Investment Growth
23 Act, (b) the refunds allowed on the investment, (c) the credits earned,
24 (d) the credits used to reduce the corporate income tax and the credits
25 used to reduce the individual income tax, (e) the credits used to obtain
26 sales and use tax refunds, (f) the number of jobs created, (g) the total
27 number of employees employed in the state by the taxpayer on the last day
28 of the calendar quarter prior to the application date and the total
29 number of employees employed in the state by the taxpayer on subsequent
30 reporting dates, (h) the expansion of capital investment, (i) the
31 estimated wage levels of jobs created subsequent to the application date,

1 (j) the total number of qualified applicants, (k) the projected future
2 state revenue gains and losses, (l) the sales tax refunds owed to the
3 applicants, (m) the credits outstanding, and (n) the value of personal
4 property exempted by class in each county.

5 (4) No information shall be provided in the report that is protected
6 by state or federal confidentiality laws.

7 Sec. 4. Section 77-4933, Reissue Revised Statutes of Nebraska, is
8 amended to read:

9 77-4933 (1) The Department of Revenue shall submit electronically an
10 annual report to the Legislature no later than October 31 of July 15 each
11 year. The report shall be on a fiscal year, accrual basis that satisfies
12 the requirements set by the Governmental Accounting Standards Board. The
13 report shall list (a) the agreements which have been signed during the
14 previous fiscal calendar year, (b) the agreements which are still in
15 effect, (c) the identity of each company, and (d) the location of each
16 project. The department shall, on or before December 15 September 1 of
17 each even-numbered year, appear at a joint hearing of the Appropriations
18 Committee of the Legislature and the Revenue Committee of the Legislature
19 and present the report. Any supplemental information requested by three
20 or more committee members shall be presented within thirty days after the
21 request.

22 (2) The report shall also state by industry group (a) the amount of
23 wage benefit credits allowed under the Quality Jobs Act, (b) the number
24 of direct jobs created at the project, (c) the amount of direct capital
25 investment under the act, (d) the estimated wage levels of jobs created
26 by the companies at the projects, (e) the estimated indirect jobs and
27 investment created on account of the projects, and (f) the projected
28 future state and local revenue gains and losses from all revenue sources
29 on account of the direct and indirect jobs and investment created on
30 account of the project.

31 (3) No information shall be provided in the report that is protected

1 by state or federal confidentiality laws.

2 Sec. 5. Section 77-5705, Reissue Revised Statutes of Nebraska, is
3 amended to read:

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

10 Sec. 6. Section 77-5723, Reissue Revised Statutes of Nebraska, is
11 amended to read:

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

16 (2) The application shall contain:

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

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

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

29 (d) A nonrefundable application fee of one thousand dollars for a
30 tier 1 project, two thousand five hundred dollars for a tier 2, tier 3,
31 or tier 5 project, five thousand dollars for a tier 4 project, and ten

1 thousand dollars for a tier 6 project. The fee shall be credited to the
2 Nebraska Incentives Fund; and

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

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

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

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

30 (5) The Tax Commissioner shall make his or her determination to
31 approve or not approve an application within one hundred eighty days

1 after the date of the application. If the Tax Commissioner requests, by
2 mail or by electronic means, additional information or clarification from
3 the taxpayer in order to make his or her determination, such one-hundred-
4 eighty-day period shall be tolled from the time the Tax Commissioner
5 makes the request to the time he or she receives the requested
6 information or clarification from the taxpayer. The taxpayer and the Tax
7 Commissioner may also agree to extend the one-hundred-eighty-day period.
8 If the Tax Commissioner fails to make his or her determination within the
9 prescribed one-hundred-eighty-day period, the application shall be deemed
10 approved.

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

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

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

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

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

29 (e) A requirement that the company update the Department of Revenue
30 annually on any changes in plans or circumstances which affect the
31 timetable of sales tax refunds as set out in the application. If the

1 company fails to comply with this requirement, the Tax Commissioner may
2 defer any pending sales tax refunds until the company does comply.

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

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

31 (9) The taxpayer may request that an agreement be modified if the

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

9 Sec. 7. Section 77-5725, Revised Statutes Cumulative Supplement,
10 2020, is amended to read:

11 77-5725 (1) Applicants may qualify for benefits under the Nebraska
12 Advantage Act in one of six tiers:

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

22 (b) Tier 2, (i) investment in qualified property of at least three
23 million dollars and the hiring of at least thirty new employees or (ii)
24 for a large data center project, investment in qualified property for the
25 data center of at least two hundred million dollars and the hiring for
26 the data center of at least thirty new employees. There shall be no new
27 project applications for benefits under this tier filed after December
28 31, 2020. All complete project applications filed on or before December
29 31, 2020, shall be considered by the Tax Commissioner and approved if the
30 project and taxpayer qualify for benefits. Agreements may be executed
31 with regard to completed project applications filed on or before December

1 31, 2020. All project agreements pending, approved, or entered into
2 before such date shall continue in full force and effect;

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

20 (e) Tier 5, (i) investment in qualified property of at least thirty
21 million dollars or (ii) for the production of electricity by using one or
22 more sources of renewable energy to produce electricity for sale as
23 described in subdivision (1)(j) of section 77-5715, investment in
24 qualified property of at least twenty million dollars. Failure to
25 maintain an average number of equivalent employees as defined in section
26 77-5727 greater than or equal to the number of equivalent employees in
27 the base year shall result in a partial recapture of benefits. There
28 shall be no new project applications for benefits under this tier filed
29 after December 31, 2020. All complete project applications filed on or
30 before December 31, 2020, shall be considered by the Tax Commissioner and
31 approved if the project and taxpayer qualify for benefits. Agreements may

1 be executed with regard to completed project applications filed on or
2 before December 31, 2020. All project agreements pending, approved, or
3 entered into before such date shall continue in full force and effect;
4 and

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

16 (2) When the taxpayer has met the required levels of employment and
17 investment contained in the agreement for a tier 1, tier 2, tier 4, tier
18 5, or tier 6 project, the taxpayer shall be entitled to the following
19 incentives:

20 (a) A refund of all sales and use taxes for a tier 2, tier 4, tier
21 5, or tier 6 project or a refund of one-half of all sales and use taxes
22 for a tier 1 project paid under the Local Option Revenue Act, the
23 Nebraska Revenue Act of 1967, and sections 13-319, 13-324, 13-2813, and
24 77-6403 from the date of the application through the meeting of the
25 required levels of employment and investment for all purchases, including
26 rentals, of:

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

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

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

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

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

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

28 (ii) An exemption from all sales and use taxes for a tier 2 large
29 data center project or a tier 5 project that is sequential to a tier 2
30 large data center project imposed under the Local Option Revenue Act, the
31 Nebraska Revenue Act of 1967, and sections 13-319, 13-324, 13-2813, and

1 77-6403 on the types of purchases, including rentals, listed in
2 subdivision (a) of this subsection for such purchases, including rentals,
3 occurring during each year of the entitlement period in which the
4 taxpayer is at or above the required levels of employment and investment,
5 except that the exemption shall be for the actual materials purchased
6 with respect to subdivisions (2)(a)(iii), (iv), and (v) of this section.
7 The Tax Commissioner shall issue such rules, regulations, certificates,
8 and forms as are appropriate to implement the efficient use of this
9 exemption.

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

12 (a) Within sixty days after the operative date of this section, any
13 taxpayer who meets the requirements of subsection (1) of section
14 77-2705.01 shall be issued a direct payment permit under section
15 77-2705.01, unless the taxpayer has opted out of this requirement. For
16 any taxpayer who is issued a direct payment permit, until such taxpayer
17 meets the required levels of employment and investment contained in the
18 agreement, the taxpayer must pay and remit any applicable sales and use
19 taxes as required by the Tax Commissioner. Any taxpayer who is issued a
20 direct payment permit under this subdivision or who otherwise receives
21 the benefit of any refunds or exemptions under this section shall comply
22 with all data disclosure requirements in subsection (6) of section
23 77-27,144, including disclosures to a municipality which would have
24 received sales and use taxes but for an exemption allowed under this
25 section; and

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

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

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

25 (b) Average wage of new employees means the average annual wage paid
26 to employees during the year at the project who are not base-year
27 employees and who are paid wages equal to at least sixty percent of the
28 Nebraska 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; and

31 (c) Nebraska average annual wage means the Nebraska average weekly

1 wage times fifty-two.

2 ~~(5)~~ ~~(4)~~ Any taxpayer who qualifies for a tier 6 project shall be
3 entitled to a credit equal to ten percent times the total compensation
4 paid to all employees, other than base-year employees, excluding any
5 compensation in excess of one million dollars paid to any one employee
6 during the year, employed at the project.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 mechanisms, forklifts, and other property used to store or move products;

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

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

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

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

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

1 the first quarter of 2006 and the result multiplied by the applicable
2 investment threshold. The investment thresholds shall be adjusted for
3 cumulative inflation since 2006.

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

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

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

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

26 Sec. 8. Section 77-5726, Revised Statutes Cumulative Supplement,
27 2020, is amended to read:

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

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

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

29 For a tier 1, tier 2, tier 3, or tier 4 project, the amount of
30 credits used against income tax withholding shall not exceed the
31 withholding attributable to new employees employed at the project,

1 excluding any compensation in excess of one million dollars paid to any
2 one employee during the year.

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

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

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

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

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

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

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

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

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

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

20 (ii) The contract price; and

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

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

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

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

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

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

31 (4) A determination that a taxpayer is not engaged in a qualified

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

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

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

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

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

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

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

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

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

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

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

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

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

30 (7) Notwithstanding any other limitations contained in the laws of
31 this state, collection of any taxes deemed to be underpayments by this

1 section shall be allowed for a period of three years after the end of the
2 entitlement period.

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

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

10 Sec. 10. Section 77-5731, Reissue Revised Statutes of Nebraska, is
11 amended to read:

12 77-5731 (1) The Tax Commissioner shall submit electronically an
13 annual report to the Legislature no later than October 31 ~~July 15~~ of each
14 year. The report shall be on a fiscal year, accrual basis that satisfies
15 the requirements set by the Governmental Accounting Standards Board. The
16 Department of Revenue shall, on or before December 15 ~~September 1~~ of each
17 even-numbered year, appear at a joint hearing of the Appropriations
18 Committee of the Legislature and the Revenue Committee of the Legislature
19 and present the report. Any supplemental information requested by three
20 or more committee members shall be presented within thirty days after the
21 request.

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

26 (3) The report shall also state, for taxpayers who are parties to
27 agreements, by industry group (a) the specific incentive options applied
28 for under the Nebraska Advantage Act, (b) the refunds and exemptions
29 allowed on the investment, (c) the credits earned, (d) the credits used
30 to reduce the corporate income tax and the credits used to reduce the
31 individual income tax, (e) the credits used to obtain sales and use tax

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

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

18 (5) The report shall provide an explanation of the audit and review
19 processes of the department in approving and rejecting applications or
20 the grant of incentives and in enforcing incentive recapture. The report
21 shall also specify the median period of time between the date of
22 application and the date the agreement is executed for all agreements
23 executed by June 30 ~~December 31~~ of the current ~~prior~~ year.

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

1 The information on first-year incentives used shall be combined with and
2 reported as part of the second year. Thereafter, the information on
3 incentives used for succeeding years shall be reported for each project
4 every two years containing information on two years of credits used,
5 exemptions used, and refunds approved. The incentives used shall include
6 incentives which have been approved by the department, but not
7 necessarily received, during the previous two years.

8 (7) The report shall include an executive summary which shows
9 aggregate information for all projects for which the information on
10 incentives used in subsection (6) of this section is reported as follows:

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

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

23 Sec. 11. Section 77-5735, Reissue Revised Statutes of Nebraska, is
24 amended to read:

25 77-5735 (1) The changes made in sections 77-5703, 77-5708, 77-5712,
26 77-5714, 77-5715, 77-5723, 77-5725, 77-5726, 77-5727, and 77-5731 by Laws
27 2008, LB895, and sections 77-5707.01, 77-5719.01, and 77-5719.02 apply to
28 all applications filed on and after April 18, 2008. For all applications
29 filed prior to such date, the provisions of the Nebraska Advantage Act as
30 they existed immediately prior to such date apply.

31 (2) The changes made in sections 77-5725 and 77-5726 by Laws 2010,

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

8 (3) The changes made in sections 77-5707, 77-5715, 77-5719, and
9 77-5725 by Laws 2010, LB918, apply to all applications filed on or after
10 July 15, 2010. For all applications filed prior to such date, the
11 provisions of the Nebraska Advantage Act as they existed immediately
12 prior to such date apply.

13 (4) The changes made in sections 77-5701, 77-5703, 77-5705, 77-5715,
14 77-5723, 77-5725, 77-5726, and 77-5727 by Laws 2012, LB1118, apply to all
15 applications filed on or after March 8, 2012. For all applications filed
16 prior to such date, the provisions of the Nebraska Advantage Act as they
17 existed immediately prior to such date apply.

18 (5) The changes made in sections 77-5707.01, 77-5709, 77-5712,
19 77-5719, 77-5720, 77-5723, and 77-5726 by Laws 2013, LB34, apply to all
20 applications filed on or after September 6, 2013. For all applications
21 filed prior to such date, the provisions of the Nebraska Advantage Act as
22 they existed immediately prior to such date apply.

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

25 (7) The changes made in sections 77-5705, 77-5723, 77-5725, 77-5726,
26 and 77-5727 and in subsections (3), (6), and (7) of section 77-5731 by
27 this legislative bill apply to any agreement entered into under the
28 Nebraska Advantage Act that is still active on the operative date of this
29 section if the taxpayer makes a one-time election, within the time period
30 prescribed by the Tax Commissioner, to have such changes apply to such
31 taxpayer's agreement. In the absence of such an election, the provisions

1 of such sections and subsections as they existed immediately prior to the
2 operative date of this section shall apply to such agreement. For each
3 election made under this subsection, the Tax Commissioner shall disclose
4 such election, the identity of the taxpayer, and the location of the
5 taxpayer's project to each municipality in which the project is located.
6 The Tax Commissioner shall make such disclosures within thirty days after
7 the election.

8 Sec. 12. Section 77-5807, Reissue Revised Statutes of Nebraska, is
9 amended to read:

10 77-5807 No later than October 31 of each year, Beginning July 15,
11 2007, and each July 15 thereafter the Tax Commissioner shall prepare a
12 report stating the total amount of credits claimed on income tax returns
13 or as refunds of sales and use tax during the previous fiscal calendar
14 year. The report shall be on a fiscal year, accrual basis that satisfies
15 the requirements set by the Governmental Accounting Standards Board. The
16 Department of Revenue shall, on or before December 15 September 1 of each
17 even-numbered year, appear at a joint hearing of the Appropriations
18 Committee of the Legislature and the Revenue Committee of the Legislature
19 and present the report. Any supplemental information requested by three
20 or more committee members shall be presented within thirty days after the
21 request. No information shall be provided in the report that is protected
22 by state or federal confidentiality laws.

23 Sec. 13. Section 77-5907, Revised Statutes Supplement, 2021, is
24 amended to read:

25 77-5907 (1) The Tax Commissioner shall prepare a report identifying
26 the following aggregate amounts for the previous fiscal calendar year:
27 (a) The amount of projected employment and investment anticipated by
28 taxpayers receiving tentative tax credits and the tentative tax credits
29 granted; (b) the actual amount of employment and investment made by
30 taxpayers that were granted tentative tax credits in the previous fiscal
31 calendar year; (c) the tax credits used; and (d) the tentative tax

1 credits that expired. The report shall be issued on or before October 31
2 of each year July 15, 2007, and each July 15 thereafter. The report shall
3 be on a fiscal year, accrual basis that satisfies the requirements set by
4 the Governmental Accounting Standards Board. The Department of Revenue
5 shall, on or before December 15 ~~September 1~~ of each even-numbered year,
6 appear at a joint hearing of the Appropriations Committee of the
7 Legislature and the Revenue Committee of the Legislature and present the
8 report. Any supplemental information requested by three or more committee
9 members shall be presented within thirty days after the request.

10 (2) Beginning with applications filed on or after August 28, 2021,
11 the report shall provide information on project-specific total credits
12 used every two years for each approved application and shall disclose (a)
13 the identity of the taxpayer, (b) the location or locations where the
14 taxpayer is earning credits, (c) the new investment or new employment
15 that was actually produced by the taxpayer to earn credits, and (d) the
16 total credits used during the immediately preceding two years, expressed
17 as a single, aggregated total.

18 (3) No information shall be provided in the report that is protected
19 by state or federal confidentiality laws.

20 Sec. 14. Section 77-6805, Revised Statutes Cumulative Supplement,
21 2020, is amended to read:

22 77-6805 Base year means the year immediately preceding the year of
23 application, subject to the following exceptions:

24 (1) Except as otherwise provided in subdivision (2) of this section,
25 except that if the year of application is 2021, the base year is either
26 2019 or 2020, whichever year the applicant had the larger number of
27 equivalent employees at the qualified location or locations; and -

28 (2) If the year of application is 2021 or 2022 and the applicant
29 increased the number of equivalent employees at the qualified location or
30 locations in either 2020 or 2021 in response to the COVID-19 pandemic,
31 the base year is 2019.

1 Sec. 15. Section 77-6811, Revised Statutes Cumulative Supplement,
2 2020, is amended to read:

3 77-6811 Investment means the value of qualified property
4 incorporated into or used at the qualified location or locations. For
5 qualified property owned by the taxpayer, the value shall be the original
6 cost of the property. Improvements to real estate qualify as investment
7 even if the entire improvement is not finished or ready for use. The
8 percentage of completion of the improvement determines the portion of the
9 investment that has occurred for any given year. For qualified property
10 rented by the taxpayer, the average net annual rent shall be multiplied
11 by the number of years of the lease for which the taxpayer was originally
12 bound, not to exceed ten years. The rental of land included in and
13 incidental to the leasing of a building shall not be excluded from the
14 computation. For purposes of this section, original cost means the amount
15 required to be capitalized for depreciation, amortization, or other
16 recovery under the Internal Revenue Code of 1986, as amended. Any amount,
17 including the labor of the taxpayer, that is capitalized as a part of the
18 cost of the qualified property or that is written off under section 179
19 of the Internal Revenue Code of 1986, as amended, shall be considered
20 part of the original cost.

21 Sec. 16. Section 77-6815, Revised Statutes Cumulative Supplement,
22 2020, is amended to read:

23 77-6815 (1) Number of new employees, for purposes of subdivisions
24 (1)(b), (4)(d), (5)(c), and (8)(b)(iii) of section 77-6831, means the
25 lesser of:

26 (a) The number of equivalent employees that are employed at the
27 qualified location or locations during a year that are in excess of the
28 number of equivalent employees during the base year; or

29 (b) The sum of:

30 (i) The number of equivalent employees employed full-time at the
31 qualified location or locations during a year who are not base-year

1 employees, who meet the health coverage requirement of subsection (7) of
2 this section, and who are paid compensation at a rate equal to at least
3 one hundred fifty percent of the Nebraska statewide average hourly wage
4 for the year of application; and

5 (ii) The number of equivalent employees who were not employed full-
6 time at the qualified location during the base year and became employed
7 full-time at the qualified location after the base year, after
8 subtracting the hours worked by such employees in the base year, who meet
9 the health coverage requirement of subsection (7) of this section, and
10 who are paid compensation at a rate equal to at least one hundred fifty
11 percent of the Nebraska statewide average hourly wage for the year of
12 application.

13 (2) Number of new employees, for purposes of subdivisions (4)(a)(i)
14 and (5)(a)(i) of section 77-6831, means the lesser of:

15 (a) The number of equivalent employees that are employed at the
16 qualified location or locations during a year that are in excess of the
17 number of equivalent employees during the base year; or

18 (b) The sum of:

19 (i) The number of equivalent employees employed full-time at the
20 qualified location or locations during a year who are not base-year
21 employees, who meet the health coverage requirement of subsection (7) of
22 this section, and who are paid compensation at a rate equal to at least
23 ninety percent of the Nebraska statewide average hourly wage for the year
24 of application; and

25 (ii) The number of equivalent employees who were not employed full-
26 time at the qualified location during the base year and became employed
27 full-time at the qualified location after the base year, after
28 subtracting the hours worked by such employees in the base year, who meet
29 the health coverage requirement of subsection (7) of this section, and
30 who are paid compensation at a rate equal to at least ninety percent of
31 the Nebraska statewide average hourly wage for the year of application.

1 (3) Number of new employees, for purposes of subdivisions (4)(a)(ii)
2 and (5)(a)(ii) of section 77-6831, means the lesser of:

3 (a) The number of equivalent employees that are employed at the
4 qualified location or locations during a year that are in excess of the
5 number of equivalent employees during the base year; or

6 (b) The sum of:

7 (i) The number of equivalent employees employed full-time at the
8 qualified location or locations during a year who are not base-year
9 employees, who meet the health coverage requirement of subsection (7) of
10 this section, and who are paid compensation at a rate equal to at least
11 seventy-five percent of the Nebraska statewide average hourly wage for
12 the year of application; and

13 (ii) The number of equivalent employees who were not employed full-
14 time at the qualified location during the base year and became employed
15 full-time at the qualified location after the base year, after
16 subtracting the hours worked by such employees in the base year, who meet
17 the health coverage requirement of subsection (7) of this section, and
18 who are paid compensation at a rate equal to at least seventy-five
19 percent of the Nebraska statewide average hourly wage for the year of
20 application.

21 (4) Number of new employees, for purposes of subdivisions (4)(a)
22 (iii), (4)(e), (5)(a)(iii), and (5)(d) of section 77-6831, means the
23 lesser of:

24 (a) The number of equivalent employees that are employed at the
25 qualified location or locations during a year that are in excess of the
26 number of equivalent employees during the base year; or

27 (b) The sum of:

28 (i) The number of equivalent employees employed full-time at the
29 qualified location or locations during a year who are not base-year
30 employees, who meet the health coverage requirement of subsection (7) of
31 this section, and who are paid compensation at a rate equal to at least

1 seventy percent of the Nebraska statewide average hourly wage for the
2 year of application; and

3 (ii) The number of equivalent employees who were not employed full-
4 time at the qualified location during the base year and became employed
5 full-time at the qualified location after the base year, after
6 subtracting the hours worked by such employees in the base year, who meet
7 the health coverage requirement of subsection (7) of this section, and
8 who are paid compensation at a rate equal to at least seventy percent of
9 the Nebraska statewide average hourly wage for the year of application.

10 (5) Number of new employees, for all other purposes, except as
11 otherwise provided in the Imagine Nebraska Act, means the lesser of:

12 (a) The number of equivalent employees that are employed at the
13 qualified location or locations during a year that are in excess of the
14 number of equivalent employees during the base year; or

15 (b) The sum of:

16 (i) The number of equivalent employees employed full-time at the
17 qualified location or locations during a year who are not base-year
18 employees, who meet the health coverage requirement of subsection (7) of
19 this section, and who are paid compensation at a rate equal to at least
20 the Nebraska statewide average hourly wage for the year of application;
21 and

22 (ii) The number of equivalent employees who were not employed full-
23 time at the qualified location during the base year and became employed
24 full-time at the qualified location after the base year, after
25 subtracting the hours worked by such employees in the base year, who meet
26 the health coverage requirement of subsection (7) of this section, and
27 who are paid compensation at a rate equal to at least the Nebraska
28 statewide average hourly wage for the year of application.

29 (6) For employees who work both at a qualified location and also
30 perform services for the taxpayer at other nonqualified locations, they
31 will be included in determining the number of new employees if more than

1 fifty percent of the time for which they are compensated is spent at the
2 qualified location. For any year other than the base year, employees who
3 work at the qualified location fifty percent or less of the time for
4 which they are compensated are not considered employed at the qualified
5 location. For employees who work both at a qualified location and also
6 perform services for the taxpayer at the employee's Nebraska residence,
7 the time for which an employee is compensated for services performed at
8 the employee's Nebraska residence will be considered spent at the
9 qualified location.

10 (7) An employee meets the health coverage requirement if the
11 taxpayer offers to that employee, for that year, the opportunity to
12 enroll in minimum essential coverage under an eligible employer-sponsored
13 plan, as those terms are defined and described in section 5000A of the
14 Internal Revenue Code of 1986, as amended, and the regulations for such
15 section.

16 (8) For purposes of this section, employed full-time means that the
17 employee is a full-time employee as defined and described in section
18 4980H of the Internal Revenue Code of 1986, as amended, and the
19 regulations for such section.

20 Sec. 17. Section 77-6828, Revised Statutes Cumulative Supplement,
21 2020, is amended to read:

22 77-6828 (1) Within ninety days after approval of the application,
23 the director shall prepare and deliver a written agreement to the
24 taxpayer for the taxpayer's signature. The taxpayer and the director
25 shall enter into such written agreement. Under the agreement, the
26 taxpayer shall agree to increase employment or investment at the
27 qualified location or locations, report compensation, wage, and hour data
28 at the qualified location or locations to the Department of Revenue
29 annually, and report all qualified property at the qualified location or
30 locations to the Department of Revenue annually. The director, on behalf
31 of the State of Nebraska, shall agree to allow the taxpayer to use the

1 incentives contained in the Imagine Nebraska Act. The application, and
2 all supporting documentation, to the extent approved, shall be considered
3 a part of the agreement. The agreement shall state:

4 (a) The qualified location or locations. If a location or locations
5 are to be qualified under subsection (2) of section 77-6818, the
6 agreement must include a commitment by the taxpayer that the seventy-five
7 percent requirement of such subsection will be met;

8 (b) The type of documentation the taxpayer will need to supply to
9 support its claim for incentives under the act;

10 (c) The date the application was complete;

11 (d) The E-verify number or numbers for the qualified location or
12 locations provided by the United States Citizenship and Immigration
13 Services;

14 (e) A requirement that the taxpayer provide any information needed
15 by the director or the Tax Commissioner to perform their respective
16 responsibilities under the Imagine Nebraska Act, in the manner specified
17 by the director or Tax Commissioner;

18 (f) A requirement that the taxpayer provide an annually updated
19 timetable showing the expected sales and use tax refunds and what year
20 they are expected to be claimed, in the manner specified by the Tax
21 Commissioner. The timetable shall include both direct refunds due to
22 investment and credits taken as sales and use tax refunds as accurately
23 as reasonably possible;

24 (g) A requirement that the taxpayer update the Tax Commissioner
25 annually, with its income tax return or in the manner specified by the
26 Tax Commissioner, on any changes in plans or circumstances which it
27 reasonably expects will affect the level of new investment and number of
28 new employees at the qualified location or locations. If the taxpayer
29 fails to comply with this requirement, the Tax Commissioner may defer any
30 pending incentive utilization until the taxpayer does comply;

31 (h) A requirement that the taxpayer provide information regarding

1 the value of health coverage provided to employees during the year who
2 are not base-year employees and who are paid the required compensation as
3 needed by the director or the Tax Commissioner to perform their
4 respective responsibilities under the Imagine Nebraska Act, in the manner
5 specified by the director or Tax Commissioner;

6 (i) A requirement that the taxpayer not violate any state or federal
7 law against discrimination;~~and~~

8 (j) A requirement that the taxpayer offer a sufficient package of
9 benefits to the employees employed full-time at the qualified location or
10 locations during the year who are not base-year employees and who are
11 paid the required compensation. If a taxpayer does not offer a sufficient
12 package of benefits to any such employee for any year during the
13 performance period, that employee shall not count toward the number of
14 new employees for such year. For purposes of this subdivision, benefits
15 means nonwage remuneration offered to an employee, including medical and
16 dental insurance plans, pension, retirement, and profit-sharing plans,
17 child care services, life insurance coverage, vision insurance coverage,
18 disability insurance coverage, and any other nonwage remuneration as
19 determined by the director. The director may adopt and promulgate rules
20 and regulations to specify what constitutes a sufficient package of
21 benefits. In determining what constitutes a sufficient package of
22 benefits, the director shall consider (i) benefit packages customarily
23 offered in Nebraska by private employers to full-time employees, (ii) the
24 impact of the cost of such benefits on the ability to attract new
25 employment and investment under the Imagine Nebraska Act, and (iii) the
26 costs that employees must bear to obtain benefits not offered by an
27 employer; and -

28 (k) A requirement that the taxpayer provide the following
29 information for the purpose of tax incentive performance audits:

30 (i) The most recent taxable valuations and levy rates for all
31 qualified locations;

1 (ii) If credits are used for job training pursuant to subdivision
2 (1)(e) of section 77-6832, a program schedule of the job training
3 activities; and

4 (iii) If credits are used for talent recruitment pursuant to
5 subdivision (1)(e) of section 77-6832, the city and state where recruited
6 employees lived when the talent recruitment activities took place.

7 (2) The application, the agreement, all supporting information, and
8 all other information reported to the director or the Tax Commissioner
9 shall be kept confidential by the director and the Tax Commissioner,
10 except for the name of the taxpayer, the qualified location or locations
11 in the agreement, the estimated amounts of increased employment and
12 investment stated in the application, the date of complete application,
13 the date the agreement was signed, and the information required to be
14 reported by section 77-6837. The application, the agreement, and all
15 supporting information shall be provided by the director to the
16 Department of Revenue. The director shall disclose, to any municipalities
17 in which project locations exist, the approval of an application and the
18 execution of an agreement under this section. The Tax Commissioner shall
19 also notify each municipality of the amount and taxpayer identity for
20 each refund of local option sales and use taxes of the municipality
21 within thirty days after the refund is allowed or approved. Disclosures
22 shall be kept confidential by the municipality unless publicly disclosed
23 previously by the taxpayer or by the State of Nebraska.

24 (3) An agreement under the Imagine Nebraska Act shall have a
25 duration of no more than fifteen years. A taxpayer with an existing
26 agreement may apply for and receive a new agreement for any qualified
27 location or locations that are not part of an existing agreement under
28 the Imagine Nebraska Act, but cannot apply for a new agreement for a
29 qualified location designated in an existing agreement until after the
30 end of the performance period for the existing agreement.

31 (4) The incentives contained in the Imagine Nebraska Act shall be in

1 lieu of the tax credits allowed by the Nebraska Advantage Rural
2 Development Act for any project. In computing credits under the Nebraska
3 Advantage Rural Development Act, any investment or employment which is
4 eligible for benefits or used in determining benefits under the Imagine
5 Nebraska Act shall be subtracted from the increases computed for
6 determining the credits under section 77-27,188. New investment or
7 employment at a project location that results in the meeting or
8 maintenance of the employment or investment requirements, the creation of
9 credits, or refunds of taxes under the Nebraska Advantage Act shall not
10 be considered new investment or employment for purposes of the Imagine
11 Nebraska Act. The use of carryover credits under the Nebraska Advantage
12 Act, the Employment and Investment Growth Act, the Invest Nebraska Act,
13 the Nebraska Advantage Rural Development Act, or the Quality Jobs Act
14 shall not preclude investment and employment from being considered new
15 investment or employment under the Imagine Nebraska Act. The use of
16 property tax exemptions at the project under the Employment and
17 Investment Growth Act or the Nebraska Advantage Act does not preclude
18 investment not eligible for such property tax exemptions from being
19 considered new investment under the Imagine Nebraska Act.

20 Sec. 18. Section 77-6831, Revised Statutes Cumulative Supplement,
21 2020, is amended to read:

22 77-6831 (1) A taxpayer shall be entitled to the sales and use tax
23 incentives contained in subsection (2) of this section if the taxpayer:

24 (a) Attains a cumulative investment in qualified property of at
25 least five million dollars and hires at least thirty new employees at the
26 qualified location or locations before the end of the ramp-up period;

27 (b) Attains a cumulative investment in qualified property of at
28 least two hundred fifty million dollars and hires at least two hundred
29 fifty new employees at the qualified location or locations before the end
30 of the ramp-up period; or

31 (c) Attains a cumulative investment in qualified property of at

1 least fifty million dollars at the qualified location or locations before
2 the end of the ramp-up period. To receive incentives under this
3 subdivision, the taxpayer must meet the following conditions:

4 (i) The average compensation of the taxpayer's employees at the
5 qualified location or locations for each year of the performance period
6 must equal at least one hundred fifty percent of the Nebraska statewide
7 average hourly wage for the year of application;

8 (ii) The taxpayer must offer to its employees who constitute full-
9 time employees as defined and described in section 4980H of the Internal
10 Revenue Code of 1986, as amended, and the regulations for such section,
11 at the qualified location or locations for each year of the performance
12 period, the opportunity to enroll in minimum essential coverage under an
13 eligible employer-sponsored plan, as those terms are defined and
14 described in section 5000A of the Internal Revenue Code of 1986, as
15 amended, and the regulations for such section; and

16 (iii) The taxpayer must offer a sufficient package of benefits as
17 described in subdivision (1)(j) of section 77-6828.

18 (2) A taxpayer meeting the requirements of subsection (1) of this
19 section shall be entitled to the following sales and use tax incentives:

20 (a) A refund of all sales and use taxes paid under the Local Option
21 Revenue Act, the Nebraska Revenue Act of 1967, the Qualified Judgment
22 Payment Act, and sections 13-319, 13-324, and 13-2813 from the date of
23 the complete application through the meeting of the required levels of
24 employment and investment for all purchases, including rentals, of:

25 (i) Qualified property used at the qualified location or locations;

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

31 (iii) Tangible personal property by a contractor or repairperson

1 after appointment as a purchasing agent of the owner of the improvement
2 to real estate when such property is incorporated into real estate at the
3 qualified location or locations. The refund shall be based on fifty
4 percent of the contract price, excluding any land, as the cost of
5 materials subject to the sales and use tax;

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

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

19 (b) An exemption from all sales and use taxes under the Local Option
20 Revenue Act, the Nebraska Revenue Act of 1967, the Qualified Judgment
21 Payment Act, and sections 13-319, 13-324, and 13-2813 on the types of
22 purchases, including rentals, listed in subdivision (a) of this
23 subsection for such purchases, including rentals, occurring during each
24 year of the performance period in which the taxpayer is at or above the
25 required levels of employment and investment, except that the exemption
26 shall be for the actual materials purchased with respect to subdivisions
27 (2)(a)(iii), (iv), and (v) of this section. The Tax Commissioner shall
28 issue such rules, regulations, certificates, and forms as are appropriate
29 to implement the efficient use of this exemption.

30 (3)(a) Upon execution of the agreement, the taxpayer shall be issued
31 a direct payment permit under section 77-2705.01, notwithstanding the

1 three million dollars in purchases limitation in subsection (1) of
2 section 77-2705.01, for each qualified location specified in the
3 agreement, unless the taxpayer has opted out of this requirement in the
4 agreement. For any taxpayer who is issued a direct payment permit, until
5 such taxpayer makes the investment in qualified property and hires the
6 new employees at the qualified location or locations as specified in
7 subsection (1) of this section, the taxpayer must pay and remit any
8 applicable sales and use taxes as required by the Tax Commissioner.

9 (b) If the taxpayer makes the investment in qualified property and
10 hires the new employees at the qualified location or locations as
11 specified in subsection (1) of this section, the taxpayer shall receive
12 the sales tax refunds described in subdivision (2)(a) of this section.
13 For any year in which the taxpayer is not at the required levels of
14 employment and investment, the taxpayer shall report all sales and use
15 taxes owed for the period on the taxpayer's ~~income tax return for the~~
16 ~~year.~~

17 (4) The taxpayer shall be entitled to one of the following credits
18 for payment of wages to new employees:

19 (a)(i) If a taxpayer attains a cumulative investment in qualified
20 property of at least one million dollars and hires at least ten new
21 employees at the qualified location or locations before the end of the
22 ramp-up period, the taxpayer shall be entitled to a credit equal to four
23 percent times the average wage of new employees times the number of new
24 employees. Wages in excess of one million dollars paid to any one
25 employee during the year shall be excluded from the calculations under
26 this subdivision;

27 (ii) If the taxpayer attains a cumulative investment in qualified
28 property of at least one million dollars and hires at least ten new
29 employees at the qualified location or locations before the end of the
30 ramp-up period and the number of new employees and investment are at a
31 qualified location in a county in Nebraska with a population of one

1 hundred thousand or greater, and at which the majority of the business
2 activities conducted are described in subdivision (1)(a) or (1)(n) of
3 section 77-6818, the taxpayer shall be entitled to a credit equal to four
4 percent times the average wage of new employees times the number of new
5 employees. Wages in excess of one million dollars paid to any one
6 employee during the year shall be excluded from the calculations under
7 this subdivision; or

8 (iii) If the taxpayer attains a cumulative investment in qualified
9 property of at least one million dollars and hires at least ten new
10 employees at the qualified location or locations before the end of the
11 ramp-up period and the number of new employees and investment are at a
12 qualified location entirely within a county in Nebraska with a population
13 of less than one hundred thousand, and at which the majority of the
14 business activities conducted are described in subdivision (1)(a) or (1)
15 (n) of section 77-6818, the taxpayer shall be entitled to a credit equal
16 to six percent times the average wage of new employees times the number
17 of new employees. For purposes of meeting the ten-employee requirement of
18 this subdivision, the number of new employees shall be multiplied by two.
19 Wages in excess of one million dollars paid to any one employee during
20 the year shall be excluded from the calculations under this subdivision;

21 (b) If a taxpayer hires at least twenty new employees at the
22 qualified location or locations before the end of the ramp-up period, the
23 taxpayer shall be entitled to a credit equal to five percent times the
24 average wage of new employees times the number of new employees if the
25 average wage of the new employees equals at least one hundred percent of
26 the Nebraska statewide average hourly wage for the year of application.
27 The credit shall equal seven percent times the average wage of new
28 employees times the number of new employees if the average wage of the
29 new employees equals at least one hundred fifty percent of the Nebraska
30 statewide average hourly wage for the year of application. The credit
31 shall equal nine percent times the average wage of new employees times

1 the number of new employees if the average wage of the new employees
2 equals at least two hundred percent of the Nebraska statewide average
3 hourly wage for the year of application. Wages in excess of one million
4 dollars paid to any one employee during the year shall be excluded from
5 the calculations under this subdivision;

6 (c) If a taxpayer attains a cumulative investment in qualified
7 property of at least five million dollars and hires at least thirty new
8 employees at the qualified location or locations before the end of the
9 ramp-up period, the taxpayer shall be entitled to a credit equal to five
10 percent times the average wage of new employees times the number of new
11 employees if the average wage of the new employees equals at least one
12 hundred percent of the Nebraska statewide average hourly wage for the
13 year of application. The credit shall equal seven percent times the
14 average wage of new employees times the number of new employees if the
15 average wage of the new employees equals at least one hundred fifty
16 percent of the Nebraska statewide average hourly wage for the year of
17 application. The credit shall equal nine percent times the average wage
18 of new employees times the number of new employees if the average wage of
19 the new employees equals at least two hundred percent of the Nebraska
20 statewide average hourly wage for the year of application. Wages in
21 excess of one million dollars paid to any one employee during the year
22 shall be excluded from the calculations under this subdivision;

23 (d) If a taxpayer attains a cumulative investment in qualified
24 property of at least two hundred fifty million dollars and hires at least
25 two hundred fifty new employees at the qualified location or locations
26 before the end of the ramp-up period, the taxpayer shall be entitled to a
27 credit equal to seven percent times the average wage of new employees
28 times the number of new employees if the average wage of the new
29 employees equals at least one hundred fifty percent of the Nebraska
30 statewide average hourly wage for the year of application. The credit
31 shall equal nine percent times the average wage of new employees times

1 the number of new employees if the average wage of the new employees
2 equals at least two hundred percent of the Nebraska statewide average
3 hourly wage for the year of application. Wages in excess of one million
4 dollars paid to any one employee during the year shall be excluded from
5 the calculations under this subdivision; or

6 (e) If a taxpayer attains a cumulative investment in qualified
7 property of at least two hundred fifty thousand dollars but less than one
8 million dollars and hires at least five new employees at the qualified
9 location or locations before the end of the ramp-up period and the number
10 of new employees and investment are at a qualified location within an
11 economic redevelopment area, the taxpayer shall be entitled to a credit
12 equal to six percent times the average wage of new employees times the
13 number of new employees if the average wage of the new employees equals
14 at least seventy percent of the Nebraska statewide average hourly wage
15 for the year of application. Wages in excess of one million dollars paid
16 to any one employee during the year shall be excluded from the
17 calculations under this subdivision. For purposes of this subdivision,
18 economic redevelopment area means an area in which (i) the average rate
19 of unemployment in the area during the period covered by the most recent
20 federal decennial census or American Community Survey 5-Year Estimate is
21 at least one hundred fifty percent of the average rate of unemployment in
22 the state during the same period and (ii) the average poverty rate in the
23 area exceeds twenty percent for the total federal census tract or tracts
24 or federal census block group or block groups in the area.

25 (5) The taxpayer shall be entitled to one of the following credits
26 for new investment:

27 (a)(i) If a taxpayer attains a cumulative investment in qualified
28 property of at least one million dollars and hires at least ten new
29 employees at the qualified location or locations before the end of the
30 ramp-up period, the taxpayer shall be entitled to a credit equal to four
31 percent of the investment made in qualified property at the qualified

1 location or locations;

2 (ii) If the taxpayer attains a cumulative investment in qualified
3 property of at least one million dollars and hires at least ten new
4 employees at the qualified location or locations before the end of the
5 ramp-up period and the number of new employees and investment are at a
6 qualified location in a county in Nebraska with a population of one
7 hundred thousand or greater, and at which the majority of the business
8 activities conducted are described in subdivision (1)(a) or (1)(n) of
9 section 77-6818, the taxpayer shall be entitled to a credit equal to four
10 percent of the investment made in qualified property at the qualified
11 location or locations unless the cumulative investment exceeds ten
12 million dollars, in which case the taxpayer shall be entitled to a credit
13 equal to seven percent of the investment made in qualified property at
14 the qualified location or locations; or

15 (iii) If the taxpayer attains a cumulative investment in qualified
16 property of at least one million dollars and hires at least ten new
17 employees at the qualified location or locations before the end of the
18 ramp-up period and the number of new employees and investment are at a
19 qualified location entirely within a county in Nebraska with a population
20 of less than one hundred thousand, and at which the majority of the
21 business activities conducted are described in subdivision (1)(a) or (1)
22 (n) of section 77-6818, the taxpayer shall be entitled to a credit equal
23 to four percent of the investment made in qualified property at the
24 qualified location or locations unless the cumulative investment exceeds
25 ten million dollars, in which case the taxpayer shall be entitled to a
26 credit equal to seven percent of the investment made in qualified
27 property at the qualified location or locations. For purposes of meeting
28 the ten-employee requirement of this subdivision, the number of new
29 employees shall be multiplied by two;

30 (b) If a taxpayer attains a cumulative investment in qualified
31 property of at least five million dollars and hires at least thirty new

1 employees at the qualified location or locations before the end of the
2 ramp-up period, the taxpayer shall be entitled to a credit equal to seven
3 percent of the investment made in qualified property at the qualified
4 location or locations;

5 (c) If a taxpayer attains a cumulative investment in qualified
6 property of at least two hundred fifty million dollars and hires at least
7 two hundred fifty new employees at the qualified location or locations
8 before the end of the ramp-up period, the taxpayer shall be entitled to a
9 credit equal to seven percent of the investment made in qualified
10 property at the qualified location or locations; or

11 (d) If a taxpayer attains a cumulative investment in qualified
12 property of at least two hundred fifty thousand dollars but less than one
13 million dollars and hires at least five new employees at the qualified
14 location or locations before the end of the ramp-up period and the number
15 of new employees and investment are at a qualified location within an
16 economic redevelopment area, the taxpayer shall be entitled to a credit
17 equal to four percent of the investment made in qualified property at the
18 qualified location or locations. For purposes of this subdivision,
19 economic redevelopment area means an area in which (i) the average rate
20 of unemployment in the area during the period covered by the most recent
21 federal decennial census or American Community Survey 5-Year Estimate is
22 at least one hundred fifty percent of the average rate of unemployment in
23 the state during the same period and (ii) the average poverty rate in the
24 area exceeds twenty percent for the total federal census tract or tracts
25 or federal census block group or block groups in the area.

26 (6)(a) The credit percentages prescribed in subdivisions (4)(a),
27 (b), (c), and (d) and subdivisions (5)(a), (b), and (c) of this section
28 shall be increased by one percentage point for wages paid and investments
29 made at qualified locations in an extremely blighted area. For purposes
30 of this subdivision, extremely blighted area means an area which, before
31 the end of the ramp-up period, has been declared an extremely blighted

1 area under section 18-2101.02.

2 (b) The credit percentages prescribed in subsections (4) and (5) of
3 this section shall be increased by one percentage point if the taxpayer:

4 (i) Is a benefit corporation as defined in section 21-403 and has
5 been such a corporation for at least one year prior to submitting an
6 application under the Imagine Nebraska Act; and

7 (ii) Remains a benefit corporation as defined in section 21-403 for
8 the duration of the taxpayer's agreement under the Imagine Nebraska Act.

9 (c) A taxpayer may, if qualified, receive one or both of the
10 increases provided in this subsection.

11 (7)(a) The credits prescribed in subsections (4) and (5) of this
12 section shall be allowable for wages paid and investments made during
13 each year of the performance period that the taxpayer is at or above the
14 required levels of employment and investment.

15 (b) The credits prescribed in subsection (5) of this section shall
16 also be allowable during the first year of the performance period for
17 investment in qualified property at the qualified location or locations
18 after the date of the complete application and before the beginning of
19 the performance period.

20 (8)(a) Property described in subdivision (8)(c) of this section used
21 at the qualified location or locations, whether purchased or leased, and
22 placed in service by the taxpayer after the date of the complete
23 application, shall constitute separate classes of property and are
24 eligible for exemption under the conditions and for the time periods
25 provided in subdivision (8)(b) of this section.

26 (b) A taxpayer shall receive the exemption of property in
27 subdivision (8)(c) of this section if the taxpayer attains one of the
28 following employment and investment levels: (i) Cumulative investment in
29 qualified property of at least five million dollars and the hiring of at
30 least thirty new employees at the qualified location or locations before
31 the end of the ramp-up period; (ii) cumulative investment in qualified

1 property of at least fifty million dollars at the qualified location or
2 locations before the end of the ramp-up period, provided the average
3 compensation of the taxpayer's employees at the qualified location or
4 locations for the year in which such investment level was attained equals
5 at least one hundred fifty percent of the Nebraska statewide average
6 hourly wage for the year of application and the taxpayer offers to its
7 employees who constitute full-time employees as defined and described in
8 section 4980H of the Internal Revenue Code of 1986, as amended, and the
9 regulations for such section, at the qualified location or locations for
10 the year in which such investment level was attained, the opportunity to
11 enroll in minimum essential coverage under an eligible employer-sponsored
12 plan, as those terms are defined and described in section 5000A of the
13 Internal Revenue Code of 1986, as amended, and the regulations for such
14 section; or (iii) cumulative investment in qualified property of at least
15 two hundred fifty million dollars and the hiring of at least two hundred
16 fifty new employees at the qualified location or locations before the end
17 of the ramp-up period. Such property shall be eligible for the exemption
18 from the first January 1 following the end of the year during which the
19 required levels were exceeded through the ninth December 31 after the
20 first year property included in subdivision (8)(c) of this section
21 qualifies for the exemption, except that for a taxpayer who has filed an
22 application under NAICS code 518210 for Data Processing, Hosting, and
23 Related Services and who files a separate sequential application for the
24 same NAICS code for which the ramp-up period begins with the year
25 immediately after the end of the previous project's performance period or
26 a taxpayer who has a project qualifying under subdivision (1)(b)(ii) of
27 section 77-5725 and who files a separate sequential application for NAICS
28 code 518210 for Data Processing, Hosting, and Related Services for which
29 the ramp-up period begins with the year immediately after the end of the
30 previous project's entitlement period, such property described in
31 subdivision (8)(c)(i) of this section shall be eligible for the exemption

1 from the first January 1 following the placement in service of such
2 property through the ninth December 31 after the year the first claim for
3 exemption is approved.

4 (c) The following personal property used at the qualified location
5 or locations, whether purchased or leased, and placed in service by the
6 taxpayer after the date of the complete application shall constitute
7 separate classes of personal property:

8 (i) All personal property that constitutes a data center if the
9 taxpayer qualifies under subdivision (8)(b)(i) or (8)(b)(ii) of this
10 section;

11 (ii) Business equipment that is located at a qualified location or
12 locations and that is involved directly in the manufacture or processing
13 of agricultural products if the taxpayer qualifies under subdivision (8)
14 (b)(i) or (8)(b)(ii) of this section; or

15 (iii) All personal property if the taxpayer qualifies under
16 subdivision (8)(b)(iii) of this section.

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

31 (9) The taxpayer shall, on or before the receipt or use of any

1 incentives under this section, pay to the director a fee of one-half
2 percent of such incentives, except for the exemption on personal
3 property, for administering the Imagine Nebraska Act, except that the fee
4 on any sales tax exemption may be paid by the taxpayer with the filing of
5 its sales and use tax return. Such fee may be paid by direct payment to
6 the director or through withholding of available refunds. A credit shall
7 be allowed against such fee for the amount of the fee paid with the
8 application. All fees collected under this subsection shall be remitted
9 to the State Treasurer for credit to the Imagine Nebraska Cash Fund,
10 which fund is hereby created. The fund shall consist of fees credited
11 under this subsection and any other money appropriated to the fund by the
12 Legislature. The fund shall be administered by the Department of Economic
13 Development and shall be used for administration of the Imagine Nebraska
14 Act. Any money in the fund available for investment shall be invested by
15 the state investment officer pursuant to the Nebraska Capital Expansion
16 Act and the Nebraska State Funds Investment Act.

17 Sec. 19. Section 77-6832, Revised Statutes Cumulative Supplement,
18 2020, is amended to read:

19 77-6832 (1)(a) The credits prescribed in section 77-6831 for a year
20 shall be established by filing the forms required by the Tax Commissioner
21 with the income tax return for the taxable year which includes the end of
22 the year the credits were earned. The credits may be used and shall be
23 applied in the order in which they were first allowable under the Imagine
24 Nebraska Act. To the extent the taxpayer has credits under the Nebraska
25 Advantage Act or the Employment and Investment Growth Act still available
26 for use in a year or years which overlap the performance period or
27 carryover period of the Imagine Nebraska Act, the credits may be used and
28 shall be applied in the order in which they were first allowable, and
29 when there are credits of the same age, the older tax incentive program's
30 credits shall be applied first. The credits may be used after any other
31 nonrefundable credits to reduce the taxpayer's income tax liability

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

7 (b) The taxpayer may use the credit provided in subsection (4) of
8 section 77-6831 (i) to reduce the taxpayer's income tax withholding
9 employer or payor tax liability under section 77-2756 or 77-2757, ~~or to~~
10 ~~reduce a qualified employee leasing company's income tax withholding~~
11 ~~employer or payor tax liability under such sections, when the taxpayer is~~
12 ~~the client-lessee of such company,~~ to the extent such liability is
13 attributable to the number of new employees employed at the qualified
14 location or locations, excluding any wages in excess of one million
15 dollars paid to any one employee during the year or (ii) to reduce a
16 qualified employee leasing company's income tax withholding employer or
17 payor tax liability under section 77-2756 or 77-2757, when the taxpayer
18 is the client-lessee of such company, to the extent such liability is
19 attributable to the number of new employees performing services for such
20 client-lessee at the qualified location or locations, excluding any wages
21 in excess of one million dollars paid to any one employee during the
22 year. To the extent of the credit used, such withholding shall not
23 constitute public funds or state tax revenue and shall not constitute a
24 trust fund or be owned by the state. The use by the taxpayer or the
25 qualified employee leasing company of the credit shall not change the
26 amount that otherwise would be reported by the taxpayer, or such
27 qualified employee leasing company, to the employee under section 77-2754
28 as income tax withheld and shall not reduce the amount that otherwise
29 would be allowed by the state as a refundable credit on an employee's
30 income tax return as income tax withheld under section 77-2755. The
31 amount of credits used against income tax withholding shall not exceed

1 the withholding attributable to the number of new employees employed at
2 the qualified location or locations or, for a qualified employee leasing
3 company, the number of new employees performing services for the
4 applicable client-lessee at the qualified location or locations,
5 excluding any wages in excess of one million dollars paid to any one
6 employee during the year. If the amount of credit used by the taxpayer or
7 the qualified employee leasing company against income tax withholding
8 exceeds such amount, the excess withholding shall be returned to the
9 Department of Revenue in the manner provided in section 77-2756, such
10 excess amount returned shall be considered unused, and the amount of
11 unused credits may be used as otherwise permitted in this section or
12 shall carry over to the extent authorized in subdivision (1)(g) of this
13 section.

14 (c) Credits may be used to obtain a refund of sales and use taxes
15 under the Local Option Revenue Act, the Nebraska Revenue Act of 1967, the
16 Qualified Judgment Payment Act, and sections 13-319, 13-324, and 13-2813
17 that are not subject to direct refund under section 77-6831 and that are
18 paid on purchases, including rentals, for use at a qualified location.

19 (d) The credits provided in subsections (4) and (5) of section
20 77-6831 may be used to repay a loan for job training or infrastructure
21 development as provided in section 77-6841.

22 (e) Credits may be used to obtain a payment from the state equal to
23 the amount which the taxpayer demonstrates to the director was paid by
24 the taxpayer after the date of the complete application for job training
25 and talent recruitment of employees who qualify in the number of new
26 employees, to the extent that proceeds from a loan described in section
27 77-6841 were not used to make such payments. For purposes of this
28 subdivision:

29 (i) Job training means training for a prospective or new employee
30 that is provided after the date of the complete application by a Nebraska
31 nonprofit college or university, a Nebraska public or private secondary

1 school, a Nebraska educational service unit, or a company that is not a
2 member of the taxpayer's unitary group or a related person to the
3 taxpayer; and

4 (ii) Talent recruitment means talent recruitment activities that
5 result in a newly recruited employee who is hired by the taxpayer after
6 the date of the complete application and who is paid compensation during
7 the year of hire at a rate equal to at least one hundred percent of the
8 Nebraska statewide average hourly wage for the year of application,
9 including marketing, relocation expenses, and search-firm fees. Talent
10 recruitment payments that may be reimbursed include, without limitation,
11 payment by the taxpayer, without repayment by the employee, of an
12 employee's student loans, an employee's tuition, and an employee's
13 downpayment on a primary residence in Nebraska. Talent recruitment
14 payments that may be reimbursed shall not include payments for the
15 recruitment of a person who constitutes a related person to the taxpayer
16 when the taxpayer is an individual or recruitment of a person who
17 constitutes a related person to an owner of the taxpayer when the
18 taxpayer is a partnership, a limited liability company, or a subchapter S
19 corporation.

20 (f) The credits provided in subsections (4) and (5) of section
21 77-6831 may be used to obtain a payment from the state equal to the
22 amount which the taxpayer demonstrates to the director was paid for
23 taxpayer-sponsored child care at the qualified location or locations
24 during the performance period and the carryover period.

25 (g) Credits may be carried over until fully utilized through the end
26 of the carryover period.

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

29 (b) Refund claims shall be filed no more than once each quarter for
30 refunds under the Imagine Nebraska Act, except that any claim for a
31 refund in excess of twenty-five thousand dollars may be filed at any

1 time.

2 (c) Refund claims for materials purchased by a purchasing agent
3 shall include:

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

5 (ii) The contract price; and

6 (iii)(A) For refunds under subdivision (2)(a)(iii) or (2)(a)(v) of
7 section 77-6831, a certification by the contractor or repairperson of the
8 percentage of the materials incorporated into or annexed to the qualified
9 location on which sales and use taxes were paid to Nebraska after
10 appointment as purchasing agent; or

11 (B) For refunds under subdivision (2)(a)(iv) of section 77-6831, a
12 certification by the contractor or repairperson of the percentage of the
13 contract price that represents the cost of materials annexed to the
14 qualified location and the percentage of the materials annexed to the
15 qualified location on which sales and use taxes were paid to Nebraska
16 after appointment as purchasing agent.

17 (d) All refund claims shall be filed, processed, and allowed as any
18 other claim under section 77-2708, except that the amounts allowed to be
19 refunded under the Imagine Nebraska Act shall be deemed to be
20 overpayments and shall be refunded notwithstanding any limitation in
21 subdivision (2)(a) of section 77-2708. The refund may be allowed if the
22 claim is filed within three years from the end of the year the required
23 levels of employment and investment are met or within the period set
24 forth in section 77-2708. Refunds shall be paid by the Tax Commissioner
25 within one hundred eighty days after receipt of the refund claim. Such
26 payments shall be subject to later recovery by the Tax Commissioner upon
27 audit.

28 (e) If a claim for a refund of sales and use taxes under the Local
29 Option Revenue Act, the Qualified Judgment Payment Act, or sections
30 13-319, 13-324, and 13-2813 of more than twenty-five thousand dollars is
31 filed by June 15 of a given year, the refund shall be made on or after

1 November 15 of the same year. If such a claim is filed on or after June
2 16 of a given year, the refund shall not be made until on or after
3 November 15 of the following year. The Tax Commissioner shall notify the
4 affected city, village, county, or municipal county of the amount of
5 refund claims of sales and use taxes under the Local Option Revenue Act,
6 the Qualified Judgment Payment Act, or sections 13-319, 13-324, and
7 13-2813 that are in excess of twenty-five thousand dollars on or before
8 July 1 of the year before the claims will be paid under this section.

9 (f) For refunds of sales and use taxes under the Local Option
10 Revenue Act, the deductions made by the Tax Commissioner for such refunds
11 shall be delayed in accordance with section 77-27,144.

12 (g) Interest shall not be allowed on any taxes refunded under the
13 Imagine Nebraska Act.

14 (3) The appointment of purchasing agents shall be recognized for the
15 purpose of changing the status of a contractor or repairperson as the
16 ultimate consumer of tangible personal property purchased after the date
17 of the appointment which is physically incorporated into or annexed at a
18 qualified location and becomes the property of the owner of the
19 improvement to real estate or the taxpayer. The purchasing agent shall be
20 jointly liable for the payment of the sales and use tax on the purchases
21 with the owner of the property.

22 (4) The determination of whether the application is complete,
23 whether a location is a qualified location, and whether to approve the
24 application and sign the agreement shall be made by the director. All
25 other interpretations of the Imagine Nebraska Act shall be made by the
26 Tax Commissioner. The Commissioner of Labor shall provide the director
27 with such information as the Department of Labor regularly receives with
28 respect to the taxpayer which the director requests from the Commissioner
29 of Labor in order to fulfill the director's duties under the act. The
30 director shall use such information to achieve efficiency in the
31 administration of the act.

1 (5) Once the director and the taxpayer have signed the agreement
2 under section 77-6828, the taxpayer, and its owners or members where
3 applicable, may report and claim and shall receive all incentives allowed
4 by the Imagine Nebraska Act, subject to the base authority limitations
5 provided in section 77-6839, without waiting for a determination by the
6 director or the Tax Commissioner or other taxing authority that the
7 taxpayer has met the required employment and investment levels or
8 otherwise qualifies, has qualified, or continues to qualify for such
9 incentives, provided that the tax return or claim has been signed by an
10 owner, member, manager, or officer of the taxpayer who declares under
11 penalties of perjury that he or she has examined the tax return or claim,
12 including accompanying schedules and statements, and to the best of his
13 or her knowledge and belief (a) the tax return or claim is correct and
14 complete in all material respects, (b) payment of the claim has not been
15 previously made by the state to the taxpayer, and (c) with respect to
16 sales or use tax refund claims, the taxpayer has not claimed or received
17 a refund of such tax from a retailer. The payment or allowance of such a
18 claim shall not prevent the director or the Tax Commissioner or other
19 taxing authority from recovering such payment, exemption, or allowance,
20 within the normal period provided by law, subject to normal appeal rights
21 of a taxpayer, if the director or Tax Commissioner or other taxing
22 authority determines upon review or audit that the taxpayer did not
23 qualify for such incentive or exemption.

24 (6) An audit of employment and investment thresholds and incentive
25 amounts shall be made by the Tax Commissioner to the extent and in the
26 manner determined by the Tax Commissioner. Upon request by the director
27 or the Tax Commissioner, the Commissioner of Labor shall report to the
28 director and the Tax Commissioner the employment data regularly reported
29 to the Department of Labor relating to number of employees and wages paid
30 for each taxpayer. The director and Tax Commissioner, to the extent they
31 determine appropriate, shall use such information to achieve efficiency

1 in the administration of the Imagine Nebraska Act. The Tax Commissioner
2 may recover any refund or part thereof which is erroneously made and any
3 credit or part thereof which is erroneously allowed by issuing a
4 deficiency determination within three years from the date of refund or
5 credit or within the period otherwise allowed for issuing a deficiency
6 determination, whichever expires later. The director shall not enter into
7 an agreement with any taxpayer unless the taxpayer agrees to
8 electronically verify the work eligibility status of all newly hired
9 employees employed in Nebraska within ninety days after the date of hire.
10 For purposes of calculating any tax incentive under the act, the hours
11 worked and compensation paid to an employee who has not been
12 electronically verified or who is not eligible to work in Nebraska shall
13 be excluded.

14 (7) A determination by the director that a location is not a
15 qualified location or a determination by the Tax Commissioner that a
16 taxpayer has failed to meet or maintain the required levels of employment
17 or investment for incentives, exemptions, or recapture, or does not
18 otherwise qualify for incentives or exemptions, may be protested by the
19 taxpayer to the Tax Commissioner within sixty days after the mailing to
20 the taxpayer of the written notice of the proposed determination by the
21 director or the Tax Commissioner, as applicable. If the notice of
22 proposed determination is not protested in writing by the taxpayer within
23 the sixty-day period, the proposed determination is a final
24 determination. If the notice is protested, the Tax Commissioner, after a
25 formal hearing by the Tax Commissioner or by an independent hearing
26 officer appointed by the Tax Commissioner, if requested by the taxpayer
27 in such protest, shall issue a written order resolving such protest. The
28 written order of the Tax Commissioner resolving a protest may be appealed
29 to the district court of Lancaster County in accordance with the
30 Administrative Procedure Act within thirty days after the issuance of the
31 order.

1 Sec. 20. Section 77-6837, Revised Statutes Cumulative Supplement,
2 2020, is amended to read:

3 77-6837 (1) Beginning in 2021, the director and the Tax Commissioner
4 shall jointly submit electronically an annual report for the previous
5 fiscal year to the Legislature no later than October 31 of each year. The
6 report shall be on a fiscal year, accrual basis that satisfies the
7 requirements set by the Governmental Accounting Standards Board. The
8 Department of Economic Development and the Department of Revenue shall
9 together, on or before December 15 of each even-numbered year, appear at
10 a joint hearing of the Appropriations Committee of the Legislature and
11 the Revenue Committee of the Legislature and present the report. Any
12 supplemental information requested by three or more committee members
13 shall be presented within thirty days after the request.

14 (2) The report shall list (a) the agreements which have been signed
15 during the previous year, (b) the agreements which are still in effect,
16 (c) the identity of each taxpayer who is party to an agreement, and (d)
17 the qualified location or locations.

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

1 class in each county under the act, (q) the total amount of the payments,
2 (r) the amount of workforce training and infrastructure development loans
3 issued, outstanding, repaid, and delinquent, and (s) the value of health
4 coverage provided to employees at qualified locations during the year who
5 are not base-year employees and who are paid the required compensation.
6 The report shall include the estimate of the amount of sales and use tax
7 refunds to be paid and tax credits to be used as were required for the
8 October forecast under section 77-6839.

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

16 (5) The report shall provide an explanation of the audit and review
17 processes of the Department of Economic Development and the Department of
18 Revenue, as applicable, in approving and rejecting applications or the
19 grant of incentives and in enforcing incentive recapture. The report
20 shall also specify the median period of time between the date of
21 application and the date the agreement is executed for all agreements
22 executed by June 30 of the current ~~December 31 of the prior~~ year.

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

1 second year. Thereafter, the information on incentives used for
2 succeeding years shall be reported for each agreement every two years
3 containing information on two years of credits used and refunds approved.
4 The incentives used shall include incentives which have been approved by
5 the director or Tax Commissioner, as applicable, but not necessarily
6 received, during the previous two years.

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

21 (8) No information shall be provided in the report or in
22 supplemental information that is protected by state or federal
23 confidentiality laws.

24 Sec. 21. Section 77-6839, Revised Statutes Cumulative Supplement,
25 2020, is amended to read:

26 77-6839 (1) The Department of Economic Development and the
27 Department of Revenue shall jointly, on or before the fifteenth day of
28 October and February of every year and the fifteenth day of April in odd-
29 numbered years, make an estimate of the amount of sales and use tax
30 refunds to be paid and tax credits to be used under the Imagine Nebraska
31 Act during the fiscal years to be forecast under section 77-27,158. The

1 estimate shall be based on the most recent data available, including
2 pending and approved applications and updates thereof as are required by
3 subdivision (1)(f) of section 77-6828. The estimate shall be forwarded to
4 the Legislative Fiscal Analyst and the Nebraska Economic Forecasting
5 Advisory Board and made a part of the advisory forecast required by
6 section 77-27,158.

7 (2)(a) In addition to the estimates required under subsection (1) of
8 this section, the Department of Economic Development shall, on or before
9 the fifteenth day of October and February of every year, make an estimate
10 of the amount of sales and use tax refunds to be paid and tax credits to
11 be used under the Imagine Nebraska Act for each of the upcoming three
12 calendar years and shall report such estimate to the Governor. The
13 estimate shall be based on the most recent data available, including
14 pending and approved applications and updates thereof as are required by
15 subdivision (1)(f) of section 77-6828. If the estimate for any such
16 calendar year exceeds the base authority:

17 (i) The Department of Economic Development shall prepare an analysis
18 explaining why the estimate exceeds the base authority. The department
19 shall include such analysis in the report it submits to the Governor
20 under this subsection; and

21 (ii) The director shall not approve any additional applications
22 under the Imagine Nebraska Act that would include refunds or credits in
23 the calendar year in which the base authority is projected to be
24 exceeded. Applications shall be considered in the order in which they are
25 received. Any applications that are not approved because the base
26 authority has been exceeded shall be placed on a wait list in the order
27 in which they were received and shall be given first priority once
28 applications may again be approved. Applications on the wait list retain
29 the same application date and base year as if they had been approved
30 within the time set forth in section 77-6827.

31 (b) For purposes of this section, base authority means the total

1 amount of refunds and credits that may be approved in any calendar year.
2 Notwithstanding any other provision of the Imagine Nebraska Act to the
3 contrary, no refunds may be paid and no credits may be used in any
4 calendar year in excess of the base authority for such calendar year. The
5 base authority shall be equal to twenty-five million dollars for calendar
6 years 2021 and 2022, one hundred million dollars for calendar years 2023
7 and 2024, and one hundred fifty million dollars for calendar year 2025.
8 Beginning with calendar year 2026 and every three years thereafter, the
9 director shall adjust the base authority to an amount equal to three
10 percent of the actual General Fund net receipts for the most recent
11 fiscal year for which such information is available. Any amount of base
12 authority that is unused in a calendar year shall carry forward to the
13 following calendar year and shall be added to the limit applicable to
14 such following calendar year, except that in no case shall the base
15 authority for any calendar year prior to 2026 exceed four hundred million
16 dollars.

17 Sec. 22. Sections 5, 6, 7, 8, 9, 11, and 25 of this act become
18 operative on January 1, 2023. Sections 14, 16, 17, and 24 of this act
19 become operative three calendar months after the adjournment of this
20 legislative session. The other sections of this act become operative on
21 their effective date.

22 Sec. 23. Original sections 77-376, 77-27,195, 77-4110, 77-4933,
23 77-5731, and 77-5807, Reissue Revised Statutes of Nebraska, sections
24 77-6811, 77-6831, 77-6832, 77-6837, and 77-6839, Revised Statutes
25 Cumulative Supplement, 2020, and section 77-5907, Revised Statutes
26 Supplement, 2021, are repealed.

27 Sec. 24. Original sections 77-6805, 77-6815, and 77-6828, Revised
28 Statutes Cumulative Supplement, 2020, are repealed.

29 Sec. 25. Original sections 77-5705, 77-5723, 77-5727, and 77-5735,
30 Reissue Revised Statutes of Nebraska, and sections 77-5725 and 77-5726,
31 Revised Statutes Cumulative Supplement, 2020, are repealed.

1 Sec. 26. Since an emergency exists, this act takes effect when
2 passed and approved according to law.