

LEGISLATURE OF NEBRASKA
ONE HUNDRED SEVENTH LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 1150

FINAL READING

Introduced by Legislative Performance Audit Committee: Geist, 25,
Chairperson; Day, 49; Friesen, 34; Hughes, 44; McCollister,
20.

Read first time January 19, 2022

Committee: Revenue

1 A BILL FOR AN ACT relating to revenue and taxation; to amend sections
2 77-376, 77-27,195, 77-4110, 77-4933, 77-5705, 77-5723, 77-5727,
3 77-5731, 77-5735, and 77-5807, Reissue Revised Statutes of Nebraska,
4 sections 77-2708, 77-5725, 77-5726, 77-6805, 77-6811, 77-6815,
5 77-6828, 77-6831, 77-6832, 77-6837, and 77-6839, Revised Statutes
6 Cumulative Supplement, 2020, and sections 77-27,144 and 77-5907,
7 Revised Statutes Supplement, 2021; to change provisions relating to
8 examination of financial records, sales and use tax refund
9 deductions, certain reporting requirements, the Nebraska Advantage
10 Act, and the Imagine Nebraska Act; to redefine terms; to harmonize
11 provisions; to provide operative dates; to repeal the original
12 sections; and to declare an emergency.
13 Be it enacted by the people of the State of Nebraska,

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

3 77-376 (1) The Tax Commissioner may examine or cause to be examined
4 in his or her behalf, and make memoranda from, any of the financial
5 records of state and local subdivisions, persons, and corporations
6 subject to the tax laws of this state, including the social security
7 numbers of employees of such state and local subdivisions, persons, and
8 corporations. No information shall be released that is not so authorized
9 by existing statutes. Unless otherwise prohibited by law, the Tax
10 Commissioner may share the information examined with the taxing or law
11 enforcement authorities of this state, other states, and the federal
12 government.

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

22 Sec. 2. Section 77-2708, Revised Statutes Cumulative Supplement,
23 2020, is amended to read:

24 77-2708 (1)(a) The sales and use taxes imposed by the Nebraska
25 Revenue Act of 1967 shall be due and payable to the Tax Commissioner
26 monthly on or before the twentieth day of the month next succeeding each
27 monthly period unless otherwise provided pursuant to the Nebraska Revenue
28 Act of 1967.

29 (b)(i) On or before the twentieth day of the month following each
30 monthly period or such other period as the Tax Commissioner may require,
31 a return for such period, along with all taxes due, shall be filed with

1 the Tax Commissioner in such form and content as the Tax Commissioner may
2 prescribe and containing such information as the Tax Commissioner deems
3 necessary for the proper administration of the Nebraska Revenue Act of
4 1967. The Tax Commissioner, if he or she deems it necessary in order to
5 insure payment to or facilitate the collection by the state of the amount
6 of sales or use taxes due, may require returns and payment of the amount
7 of such taxes for periods other than monthly periods in the case of a
8 particular seller, retailer, or purchaser, as the case may be. The Tax
9 Commissioner shall by rule and regulation require reports and tax
10 payments from sellers, retailers, or purchasers depending on their yearly
11 tax liability. Except as required by the streamlined sales and use tax
12 agreement, annual returns shall be required if such sellers', retailers',
13 or purchasers' yearly tax liability is less than nine hundred dollars,
14 quarterly returns shall be required if their yearly tax liability is nine
15 hundred dollars or more and less than three thousand dollars, and monthly
16 returns shall be required if their yearly tax liability is three thousand
17 dollars or more. The Tax Commissioner shall have the discretion to allow
18 an annual return for seasonal retailers, even when their yearly tax
19 liability exceeds the amounts listed in this subdivision.

20 The Tax Commissioner may adopt and promulgate rules and regulations
21 to allow annual, semiannual, or quarterly returns for any retailer making
22 monthly remittances or payments of sales and use taxes by electronic
23 funds transfer or for any retailer remitting tax to the state pursuant to
24 the streamlined sales and use tax agreement. Such rules and regulations
25 may establish a method of determining the amount of the payment that will
26 result in substantially all of the tax liability being paid each quarter.
27 At least once each year, the difference between the amount paid and the
28 amount due shall be reconciled. If the difference is more than ten
29 percent of the amount paid, a penalty of fifty percent of the unpaid
30 amount shall be imposed.

31 (ii) For purposes of the sales tax, a return shall be filed by every

1 retailer liable for collection from a purchaser and payment to the state
2 of the tax, except that a combined sales tax return may be filed for all
3 licensed locations which are subject to common ownership. For purposes of
4 this subdivision, common ownership means the same person or persons own
5 eighty percent or more of each licensed location. For purposes of the use
6 tax, a return shall be filed by every retailer engaged in business in
7 this state and by every person who has purchased property, the storage,
8 use, or other consumption of which is subject to the use tax, but who has
9 not paid the use tax due to a retailer required to collect the tax.

10 (iii) The Tax Commissioner may require that returns be signed by the
11 person required to file the return or by his or her duly authorized agent
12 but need not be verified by oath.

13 (iv) A taxpayer who keeps his or her regular books and records on a
14 cash basis, an accrual basis, or any generally recognized accounting
15 basis which correctly reflects the operation of the business may file the
16 sales and use tax returns required by the Nebraska Revenue Act of 1967 on
17 the same accounting basis that is used for the regular books and records,
18 except that on credit, conditional, and installment sales, the retailer
19 who keeps his or her books on an accrual basis may report such sales on
20 the cash basis and pay the tax upon the collections made during each
21 month. If a taxpayer transfers, sells, assigns, or otherwise disposes of
22 an account receivable, he or she shall be deemed to have received the
23 full balance of the consideration for the original sale and shall be
24 liable for the remittance of the sales tax on the balance of the total
25 sale price not previously reported, except that such transfer, sale,
26 assignment, or other disposition of an account receivable by a retailer
27 to a subsidiary shall not be deemed to require the retailer to pay the
28 sales tax on the credit sale represented by the account transferred prior
29 to the time the customer makes payment on such account. If the subsidiary
30 does not obtain a Nebraska sales tax permit, the taxpayer shall obtain a
31 surety bond in favor of the State of Nebraska to insure payment of the

1 tax and any interest and penalty imposed thereon under this section in an
2 amount not less than two times the amount of tax payable on outstanding
3 accounts receivable held by the subsidiary as of the end of the prior
4 calendar year. Failure to obtain either a sales tax permit or a surety
5 bond in accordance with this section shall result in the payment on the
6 next required filing date of all sales taxes not previously remitted.
7 When the retailer has adopted one basis or the other of reporting credit,
8 conditional, or installment sales and paying the tax thereon, he or she
9 will not be permitted to change from that basis without first having
10 notified the Tax Commissioner.

11 (c) Except as provided in the streamlined sales and use tax
12 agreement, the taxpayer required to file the return shall deliver or mail
13 any required return together with a remittance of the net amount of the
14 tax due to the office of the Tax Commissioner on or before the required
15 filing date. Failure to file the return, filing after the required filing
16 date, failure to remit the net amount of the tax due, or remitting the
17 net amount of the tax due after the required filing date shall be cause
18 for a penalty, in addition to interest, of ten percent of the amount of
19 tax not paid by the required filing date or twenty-five dollars,
20 whichever is greater, unless the penalty is being collected under
21 subdivision (1)(i), (1)(j)(i), or (1)(k)(i) of section 77-2703 by a
22 county treasurer or the Department of Motor Vehicles, in which case the
23 penalty shall be five dollars.

24 (d) The taxpayer shall deduct and withhold, from the taxes otherwise
25 due from him or her on his or her tax return, two and one-half percent of
26 the first three thousand dollars remitted each month to reimburse himself
27 or herself for the cost of collecting the tax. Taxpayers filing a
28 combined return as allowed by subdivision (1)(b)(ii) of this subsection
29 shall compute such collection fees on the basis of the receipts and
30 liability of each licensed location.

31 (e) A retailer that makes sales into Nebraska using a multivendor

1 marketplace platform is relieved of its obligation to collect and remit
2 sales taxes to Nebraska with regard to any sales taxes collected and
3 remitted by the multivendor marketplace platform. Such a retailer must
4 include all sales into Nebraska in its gross receipts in its return, but
5 may claim credit for any sales taxes collected and remitted by the
6 multivendor marketplace platform with respect to such retailer's sales.
7 Such retailer is liable for the sales tax due on sales into Nebraska as
8 provided in section 77-2704.35.

9 (f) A multivendor marketplace platform is relieved of its obligation
10 to collect and remit the correct amount of state and local sales taxes to
11 Nebraska to the extent that the multivendor marketplace platform can
12 establish that the error was due to insufficient or incorrect information
13 given to the multivendor marketplace platform by the seller and relied on
14 by the multivendor marketplace platform. This subdivision shall not apply
15 if the multivendor marketplace platform and the seller are related
16 persons under either section 267(b) or (c) or section 707(b) of the
17 Internal Revenue Code of 1986 or if the seller is also the multivendor
18 marketplace platform operator.

19 (2)(a) If the Tax Commissioner determines that any sales or use tax
20 amount, penalty, or interest has been paid more than once, has been
21 erroneously or illegally collected or computed, or has been paid and the
22 purchaser qualifies for a refund under section 77-2708.01, the Tax
23 Commissioner shall set forth that fact in his or her records and the
24 excess amount collected or paid may be credited on any sales, use, or
25 income tax amounts then due and payable from the person under the
26 Nebraska Revenue Act of 1967. Any balance may be refunded to the person
27 by whom it was paid or his or her successors, administrators, or
28 executors.

29 (b) No refund shall be allowed unless a claim therefor is filed with
30 the Tax Commissioner by the person who made the overpayment or his or her
31 attorney, executor, or administrator within three years from the required

1 filing date following the close of the period for which the overpayment
2 was made, within six months after any determination becomes final under
3 section 77-2709, or within six months from the date of overpayment with
4 respect to such determinations, whichever of these three periods expires
5 later, unless the credit relates to a period for which a waiver has been
6 given. Failure to file a claim within the time prescribed in this
7 subsection shall constitute a waiver of any demand against the state on
8 account of overpayment.

9 (c) Every claim shall be in writing on forms prescribed by the Tax
10 Commissioner and shall state the specific amount and grounds upon which
11 the claim is founded. No refund shall be made in any amount less than two
12 dollars.

13 (d) The Tax Commissioner shall allow or disallow a claim within one
14 hundred eighty days after it has been filed. A request for a hearing
15 shall constitute a waiver of the one-hundred-eighty-day period. The
16 claimant and the Tax Commissioner may also agree to extend the one-
17 hundred-eighty-day period. If a hearing has not been requested and the
18 Tax Commissioner has neither allowed nor disallowed a claim within either
19 the one hundred eighty days or the period agreed to by the claimant and
20 the Tax Commissioner, the claim shall be deemed to have been allowed.

21 (e) Within thirty days after disallowing any claim in whole or in
22 part, the Tax Commissioner shall serve notice of his or her action on the
23 claimant in the manner prescribed for service of notice of a deficiency
24 determination.

25 (f) Within thirty days after the mailing of the notice of the Tax
26 Commissioner's action upon a claim filed pursuant to the Nebraska Revenue
27 Act of 1967, the action of the Tax Commissioner shall be final unless the
28 taxpayer seeks review of the Tax Commissioner's determination as provided
29 in section 77-27,127.

30 (g) Upon the allowance of a credit or refund of any sum erroneously
31 or illegally assessed or collected, of any penalty collected without

1 authority, or of any sum which was excessive or in any manner wrongfully
2 collected, interest shall be allowed and paid on the amount of such
3 credit or refund at the rate specified in section 45-104.02, as such rate
4 may from time to time be adjusted, from the date such sum was paid or
5 from the date the return was required to be filed, whichever date is
6 later, to the date of the allowance of the refund or, in the case of a
7 credit, to the due date of the amount against which the credit is
8 allowed, but in the case of a voluntary and unrequested payment in excess
9 of actual tax liability or a refund under section 77-2708.01, no interest
10 shall be allowed when such excess is refunded or credited.

11 (h) No suit or proceeding shall be maintained in any court for the
12 recovery of any amount alleged to have been erroneously or illegally
13 determined or collected unless a claim for refund or credit has been duly
14 filed.

15 (i) The Tax Commissioner may recover any refund or part thereof
16 which is erroneously made and any credit or part thereof which is
17 erroneously allowed by issuing a deficiency determination within one year
18 from the date of refund or credit or within the period otherwise allowed
19 for issuing a deficiency determination, whichever expires later.

20 (j)(i) Credit shall be allowed to the retailer, contractor, or
21 repairperson for sales or use taxes paid pursuant to the Nebraska Revenue
22 Act of 1967 on any deduction taken that is attributed to bad debts not
23 including interest. Bad debt has the same meaning as in 26 U.S.C. 166, as
24 such section existed on January 1, 2003. However, the amount calculated
25 pursuant to 26 U.S.C. 166 shall be adjusted to exclude: Financing charges
26 or interest; sales or use taxes charged on the purchase price;
27 uncollectible amounts on property that remains in the possession of the
28 seller until the full purchase price is paid; and expenses incurred in
29 attempting to collect any debt and repossessed property.

30 (ii) Bad debts may be deducted on the return for the period during
31 which the bad debt is written off as uncollectible in the claimant's

1 books and records and is eligible to be deducted for federal income tax
2 purposes. A claimant who is not required to file federal income tax
3 returns may deduct a bad debt on a return filed for the period in which
4 the bad debt is written off as uncollectible in the claimant's books and
5 records and would be eligible for a bad debt deduction for federal income
6 tax purposes if the claimant was required to file a federal income tax
7 return.

8 (iii) If a deduction is taken for a bad debt and the debt is
9 subsequently collected in whole or in part, the tax on the amount so
10 collected must be paid and reported on the return filed for the period in
11 which the collection is made.

12 (iv) When the amount of bad debt exceeds the amount of taxable sales
13 for the period during which the bad debt is written off, a refund claim
14 may be filed within the otherwise applicable statute of limitations for
15 refund claims. The statute of limitations shall be measured from the due
16 date of the return on which the bad debt could first be claimed.

17 (v) If filing responsibilities have been assumed by a certified
18 service provider, the service provider may claim, on behalf of the
19 retailer, any bad debt allowance provided by this section. The certified
20 service provider shall credit or refund the full amount of any bad debt
21 allowance or refund received to the retailer.

22 (vi) For purposes of reporting a payment received on a previously
23 claimed bad debt, any payments made on a debt or account are applied
24 first proportionally to the taxable price of the property or service and
25 the sales tax thereon, and secondly to interest, service charges, and any
26 other charges.

27 (vii) In situations in which the books and records of the party
28 claiming the bad debt allowance support an allocation of the bad debts
29 among the member states in the streamlined sales and use tax agreement,
30 the state shall permit the allocation.

31 (3) Beginning July 1, 2020, if a refund claim under this section

1 involves a refund of a tax imposed under the Local Option Revenue Act or
2 section 13-319, 13-2813, or 77-6403 and the amount of such tax to be
3 refunded is at least five thousand dollars, the Tax Commissioner shall
4 notify the affected city, village, county, or municipal county of such
5 claim within twenty days after receiving the claim. If the Tax
6 Commissioner allows the claim and the refund of such tax is at least five
7 thousand dollars, the Tax Commissioner shall notify the affected city,
8 village, county, or municipal county of such refund and shall give the
9 city, village, county, or municipal county the option of having such
10 refund deducted from its tax proceeds in one lump sum or in twelve equal
11 monthly installments. The city, village, county, or municipal county
12 shall make its selection and shall certify the selection to the Tax
13 Commissioner within twenty days after receiving notice of the refund. The
14 Tax Commissioner shall then deduct such refund from the applicable tax
15 proceeds in accordance with the selection when he or she deducts refunds
16 pursuant to section 13-324, 13-2814, ~~77-27,144,~~ or 77-6403 or subsection
17 (1) of section 77-27,144, whichever is applicable. This subsection shall
18 not apply to any refund that is subject to subdivision (2)(a) or (2)(b)
19 (ii) or subsection (3) or (4) of section 77-27,144.

20 Sec. 3. Section 77-27,144, Revised Statutes Supplement, 2021, is
21 amended to read:

22 77-27,144 (1) The Tax Commissioner shall collect the tax imposed by
23 any incorporated municipality concurrently with collection of a state tax
24 in the same manner as the state tax is collected. The Tax Commissioner
25 shall remit monthly the proceeds of the tax to the incorporated
26 municipalities levying the tax, after deducting the amount of refunds
27 made and three percent of the remainder to be credited to the Municipal
28 Equalization Fund.

29 (2)(a) {2} Deductions for a refund made pursuant to section 77-4105,
30 77-4106, 77-5725, or 77-5726 and owed by a city of the first class, city
31 of the second class, or village shall be delayed for one year after the

1 refund has been made to the taxpayer. The Department of Revenue shall
2 notify the municipality liable for a refund exceeding one thousand five
3 hundred dollars of the pending refund, the amount of the refund, and the
4 month in which the deduction will be made or begin, except that if the
5 amount of a refund claimed under section 77-4105, 77-4106, 77-5725, or
6 77-5726 exceeds twenty-five percent of the municipality's total sales and
7 use tax receipts, net of any refunds or sales tax collection fees, for
8 the municipality's prior fiscal year, the department shall deduct the
9 refund over the period of one year in equal monthly amounts beginning
10 after the one-year notification period required by this subdivision
11 subsection. This subsection applies to refunds owed by cities of the
12 first class, cities of the second class, and villages. This subsection
13 applies to refunds beginning January 1, 2014.

14 (b) Deductions for a refund made pursuant to section 77-4105,
15 77-4106, 77-5725, or 77-5726 and owed by a city of the metropolitan class
16 or city of the primary class shall be made as follows:

17 (i) During calendar year 2023, such deductions shall be made in
18 accordance with subsection (1) of this section; and

19 (ii) During calendar year 2024 and each calendar year thereafter,
20 such deductions shall be made based on estimated amounts as described in
21 this subdivision. On or before March 1, 2023, and on or before March 1 of
22 each year thereafter, the Department of Revenue shall notify each city of
23 the metropolitan class and city of the primary class of the total amount
24 of such refunds that are estimated to be paid during the following
25 calendar year. Such estimated amount shall be used to establish the total
26 amount to be deducted in the following calendar year. The department
27 shall deduct such amount over the following calendar year in twelve equal
28 monthly amounts. Beginning with the notification sent in calendar year
29 2025, the notification shall include any adjustment needed for the prior
30 calendar year to account for any difference between the estimated amount
31 deducted in such prior calendar year and the actual amount of refunds

1 paid in such year.

2 (3) Deductions for a refund made pursuant to the Imagine Nebraska
3 Act shall be delayed as provided in this subsection after the refund has
4 been made to the taxpayer. The Department of Revenue shall notify each
5 municipality liable for a refund exceeding one thousand five hundred
6 dollars of the pending refund and the amount of the refund claimed under
7 the Imagine Nebraska Act. The notification shall be made by March 1 of
8 each year beginning in 2021 and shall be used to establish the refund
9 amount for the following calendar year. The notification shall include
10 any excess or underpayment from the prior calendar year. The department
11 shall deduct the refund over a period of one year in equal monthly
12 amounts beginning in January following the notification. This subsection
13 applies to total annual refunds exceeding one million dollars or twenty-
14 five percent of the municipality's total sales and use tax receipts for
15 the prior fiscal year, whichever is the lesser amount.

16 (4) Deductions for a refund made pursuant to the Urban Redevelopment
17 Act shall be delayed as provided in this subsection after the refund has
18 been made to the taxpayer. The Department of Revenue shall notify each
19 municipality liable for a refund exceeding one thousand five hundred
20 dollars of the pending refund and the amount of the refund claimed under
21 the Urban Redevelopment Act. The notification shall be made by March 1 of
22 each year beginning in 2022 and shall be used to establish the refund
23 amount for the following calendar year. The notification shall include
24 any excess or underpayment from the prior calendar year. The department
25 shall deduct the refund over a period of one year in equal monthly
26 amounts beginning in January following the notification. This subsection
27 applies to total annual refunds exceeding one million dollars or twenty-
28 five percent of the municipality's total sales and use tax receipts for
29 the prior fiscal year, whichever is the lesser amount.

30 (5) The Tax Commissioner shall keep full and accurate records of all
31 money received and distributed under the provisions of the Local Option

1 Revenue Act. When proceeds of a tax levy are received but the identity of
2 the incorporated municipality which levied the tax is unknown and is not
3 identified within six months after receipt, the amount shall be credited
4 to the Municipal Equalization Fund. The municipality may request the
5 names and addresses of the retailers which have collected the tax as
6 provided in subsection (13) of section 77-2711 and may certify an
7 individual to request and review confidential sales and use tax returns
8 and sales and use tax return information as provided in subsection (14)
9 of section 77-2711.

10 (6)(a) Every qualifying business that has filed an application to
11 receive tax incentives under the Employment and Investment Growth Act,
12 the Nebraska Advantage Act, the Imagine Nebraska Act, or the Urban
13 Redevelopment Act shall, with respect to such acts, provide annually to
14 each municipality, in aggregate data, the maximum amount the qualifying
15 business is eligible to receive in the current year in refunds of local
16 sales and use taxes of the municipality and exemptions for the previous
17 year, and the estimate of annual refunds of local sales and use taxes of
18 the municipality and exemptions such business intends to claim in each
19 future year. Such information shall be kept confidential by the
20 municipality unless publicly disclosed previously by the taxpayer or by
21 the State of Nebraska.

22 (b) For purposes of this subsection, municipality means a
23 municipality that has adopted the local option sales and use tax under
24 the Local Option Revenue Act and to which the qualifying business has
25 paid such sales and use tax.

26 (c) The qualifying business shall provide the information to the
27 municipality on or before June 30 of each year.

28 (d) Any amounts held by a municipality to make sales and use tax
29 refunds under the Employment and Investment Growth Act, the Nebraska
30 Advantage Act, the Imagine Nebraska Act, and the Urban Redevelopment Act
31 shall not count toward any budgeted restricted funds limitation as

1 provided in section 13-519 or toward any cash reserve limitation as
2 provided in section 13-504.

3 Sec. 4. Section 77-27,195, Reissue Revised Statutes of Nebraska, is
4 amended to read:

5 77-27,195 (1) The Tax Commissioner shall prepare a report
6 identifying the amount of investment in this state and the number of
7 equivalent jobs created by each taxpayer claiming a credit pursuant to
8 the Nebraska Advantage Rural Development Act. The report shall include
9 the amount of credits claimed in the aggregate. The report shall be
10 issued on or before October 31 ~~July 15~~ of each year for all credits
11 allowed during the previous fiscal calendar year. The report shall be on
12 a fiscal year, accrual basis that satisfies the requirements set by the
13 Governmental Accounting Standards Board. The Department of Revenue shall,
14 on or before December 15 ~~September 1~~ of each even-numbered year, appear
15 at a joint hearing of the Appropriations Committee of the Legislature and
16 the Revenue Committee of the Legislature and present the report. Any
17 supplemental information requested by three or more committee members
18 shall be presented within thirty days after the request.

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

1 two years of credits used and refunds approved. The incentives used shall
2 include incentives which have been approved by the Department of Revenue,
3 but not necessarily received, during the previous two fiscal calendar
4 years.

5 (3) For livestock modernization or expansion projects, the report
6 shall disclose (a) the identity of the taxpayer, (b) the total credits
7 used and refunds approved during the preceding fiscal calendar year, and
8 (c) the location of the project.

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

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

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

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

27 (3) The report shall also state by industry group (a) the specific
28 incentive options applied for under the Employment and Investment Growth
29 Act, (b) the refunds allowed on the investment, (c) the credits earned,
30 (d) the credits used to reduce the corporate income tax and the credits
31 used to reduce the individual income tax, (e) the credits used to obtain

1 sales and use tax refunds, (f) the number of jobs created, (g) the total
2 number of employees employed in the state by the taxpayer on the last day
3 of the calendar quarter prior to the application date and the total
4 number of employees employed in the state by the taxpayer on subsequent
5 reporting dates, (h) the expansion of capital investment, (i) the
6 estimated wage levels of jobs created subsequent to the application date,
7 (j) the total number of qualified applicants, (k) the projected future
8 state revenue gains and losses, (l) the sales tax refunds owed to the
9 applicants, (m) the credits outstanding, and (n) the value of personal
10 property exempted by class in each county.

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

13 Sec. 6. Section 77-4933, Reissue Revised Statutes of Nebraska, is
14 amended to read:

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

28 (2) The report shall also state by industry group (a) the amount of
29 wage benefit credits allowed under the Quality Jobs Act, (b) the number
30 of direct jobs created at the project, (c) the amount of direct capital
31 investment under the act, (d) the estimated wage levels of jobs created

1 by the companies at the projects, (e) the estimated indirect jobs and
2 investment created on account of the projects, and (f) the projected
3 future state and local revenue gains and losses from all revenue sources
4 on account of the direct and indirect jobs and investment created on
5 account of the project.

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

8 Sec. 7. Section 77-5705, Reissue Revised Statutes of Nebraska, is
9 amended to read:

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

16 Sec. 8. Section 77-5723, Reissue Revised Statutes of Nebraska, is
17 amended to read:

18 77-5723 (1) In order to utilize the incentives set forth in the
19 Nebraska Advantage Act, the taxpayer shall file an application, on a form
20 developed by the Tax Commissioner, requesting an agreement with the Tax
21 Commissioner.

22 (2) The application shall contain:

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

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

27 (c) If more than one location within this state is involved,
28 sufficient documentation to show that the employment and investment at
29 different locations are interdependent parts of the plan. A headquarters
30 shall be presumed to be interdependent with each other location directly
31 controlled by such headquarters. A showing that the parts of the plan

1 would be considered parts of a unitary business for corporate income tax
2 purposes shall not be sufficient to show interdependence for the purposes
3 of this subdivision;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

15 Sec. 9. Section 77-5725, Revised Statutes Cumulative Supplement,
16 2020, is amended to read:

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

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

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

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

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

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

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

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

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

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

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

1 rentals, of:

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

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

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

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

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

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

1 during each year of the entitlement period in which the taxpayer is at or
2 above the required levels of employment and investment; or -

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

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

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

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

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

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

31 (b) Average wage of new employees means the average annual wage paid

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

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

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

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

22 (7) ~~(6)~~ The credits prescribed in subsections (4) ~~(3)~~, (5) ~~(4)~~, and
23 (6) ~~(5)~~ of this section shall be allowable for compensation paid and
24 investments made during each year of the entitlement period that the
25 taxpayer is at or above the required levels of employment and investment.

26 (8) ~~(7)~~ The credit prescribed in subsection (6) ~~(5)~~ of this section
27 shall also be allowable during the first year of the entitlement period
28 for investment in qualified property at the project after the date of the
29 application and before the required levels of employment and investment
30 were met.

31 (9)(a) ~~(8)(a)~~ Property described in subdivisions (9)(c)(i) ~~(8)(c)(i)~~

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

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

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

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

1 the first claim for exemption approved under this subdivision through the
2 ninth December 31 after the year the first claim for exemption is
3 approved.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 Sec. 10. Section 77-5726, Revised Statutes Cumulative Supplement,
2 2020, is amended to read:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

26 (ii) The contract price; and

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

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

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

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

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

29 (3) The appointment of purchasing agents shall be recognized for the
30 purpose of changing the status of a contractor or repairperson as the
31 ultimate consumer of tangible personal property purchased after the date

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

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

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

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

29 (b) In the case of a taxpayer who has failed to meet the required
30 levels of investment or employment within the required time period, all
31 reduction in the personal property tax because of the act shall be

1 recaptured.

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

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

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

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

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

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

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

31 (c) All amounts received by a county under this section shall be

1 allocated to each taxing unit levying taxes on tangible personal property
2 in the county in the same proportion that the levy on tangible personal
3 property of such taxing unit bears to the total levy of all of such
4 taxing units.

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

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

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

16 Sec. 12. Section 77-5731, Reissue Revised Statutes of Nebraska, is
17 amended to read:

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

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

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

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

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

30 (6) The report shall provide information on project-specific total
31 incentives used every two years for each approved project. The report

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

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

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

29 Sec. 13. Section 77-5735, Reissue Revised Statutes of Nebraska, is
30 amended to read:

31 77-5735 (1) The changes made in sections 77-5703, 77-5708, 77-5712,

1 77-5714, 77-5715, 77-5723, 77-5725, 77-5726, 77-5727, and 77-5731 by Laws
2 2008, LB895, and sections 77-5707.01, 77-5719.01, and 77-5719.02 apply to
3 all applications filed on and after April 18, 2008. For all applications
4 filed prior to such date, the provisions of the Nebraska Advantage Act as
5 they existed immediately prior to such date apply.

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

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

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

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

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

31 (7) The changes made in sections 77-5705, 77-5723, 77-5725, 77-5726,

1 and 77-5727 and in subsections (3), (6), and (7) of section 77-5731 by
2 this legislative bill apply to any agreement entered into under the
3 Nebraska Advantage Act that is still active on the operative date of this
4 section if the taxpayer makes a one-time election, within the time period
5 prescribed by the Tax Commissioner, to have such changes apply to such
6 taxpayer's agreement. In the absence of such an election, the provisions
7 of such sections and subsections as they existed immediately prior to the
8 operative date of this section shall apply to such agreement. For each
9 election made under this subsection, the Tax Commissioner shall disclose
10 such election, the identity of the taxpayer, and the location of the
11 taxpayer's project to each municipality in which the project is located.
12 The Tax Commissioner shall make such disclosures within thirty days after
13 the election.

14 Sec. 14. Section 77-5807, Reissue Revised Statutes of Nebraska, is
15 amended to read:

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

29 Sec. 15. Section 77-5907, Revised Statutes Supplement, 2021, is
30 amended to read:

31 77-5907 (1) The Tax Commissioner shall prepare a report identifying

1 the following aggregate amounts for the previous fiscal calendar year:
2 (a) The amount of projected employment and investment anticipated by
3 taxpayers receiving tentative tax credits and the tentative tax credits
4 granted; (b) the actual amount of employment and investment made by
5 taxpayers that were granted tentative tax credits in the previous fiscal
6 calendar year; (c) the tax credits used; and (d) the tentative tax
7 credits that expired. The report shall be issued on or before October 31
8 of each year July 15, 2007, and each July 15 thereafter. The report shall
9 be on a fiscal year, accrual basis that satisfies the requirements set by
10 the Governmental Accounting Standards Board. The Department of Revenue
11 shall, on or before December 15 ~~September 1~~ of each even-numbered year,
12 appear at a joint hearing of the Appropriations Committee of the
13 Legislature and the Revenue Committee of the Legislature and present the
14 report. Any supplemental information requested by three or more committee
15 members shall be presented within thirty days after the request.

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

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

26 Sec. 16. Section 77-6805, Revised Statutes Cumulative Supplement,
27 2020, is amended to read:

28 77-6805 Base year means the year immediately preceding the year of
29 application, subject to the following exceptions:

30 (1) Except as otherwise provided in subdivision (2) of this section,
31 ~~except that~~ if the year of application is 2021, the base year is either

1 2019 or 2020, whichever year the applicant had the larger number of
2 equivalent employees at the qualified location or locations; and -

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

7 Sec. 17. Section 77-6811, Revised Statutes Cumulative Supplement,
8 2020, is amended to read:

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

27 Sec. 18. Section 77-6815, Revised Statutes Cumulative Supplement,
28 2020, is amended to read:

29 77-6815 (1) Number of new employees, for purposes of subdivisions
30 (1)(b), (4)(d), (5)(c), and (8)(b)(iii) of section 77-6831, means the
31 lesser of:

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

4 (b) The sum of:

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

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

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

21 (a) The number of equivalent employees that are employed at the
22 qualified location or locations during a year that are in excess of the
23 number of equivalent employees during the base year; or

24 (b) The sum of:

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

31 (ii) The number of equivalent employees who were not employed full-

1 time at the qualified location during the base year and became employed
2 full-time at the qualified location after the base year, after
3 subtracting the hours worked by such employees in the base year, who meet
4 the health coverage requirement of subsection (7) of this section, and
5 who are paid compensation at a rate equal to at least ninety percent of
6 the Nebraska statewide average hourly wage for the year of application.

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

9 (a) The number of equivalent employees that are employed at the
10 qualified location or locations during a year that are in excess of the
11 number of equivalent employees during the base year; or

12 (b) The sum of:

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

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

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

30 (a) The number of equivalent employees that are employed at the
31 qualified location or locations during a year that are in excess of the

1 number of equivalent employees during the base year; or

2 (b) The sum of:

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

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

16 (5) Number of new employees, for all other purposes, except as
17 otherwise provided in the ImagiNE Nebraska Act, means the lesser of:

18 (a) The number of equivalent employees that are employed at the
19 qualified location or locations during a year that are in excess of the
20 number of equivalent employees during the base year; or

21 (b) The sum of:

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

28 (ii) The number of equivalent employees who were not employed full-
29 time at the qualified location during the base year and became employed
30 full-time at the qualified location after the base year, after
31 subtracting the hours worked by such employees in the base year, who meet

1 the health coverage requirement of subsection (7) of this section, and
2 who are paid compensation at a rate equal to at least the Nebraska
3 statewide average hourly wage for the year of application.

4 (6) For employees who work both at a qualified location and also
5 perform services for the taxpayer at other nonqualified locations, they
6 will be included in determining the number of new employees if more than
7 fifty percent of the time for which they are compensated is spent at the
8 qualified location. For any year other than the base year, employees who
9 work at the qualified location fifty percent or less of the time for
10 which they are compensated are not considered employed at the qualified
11 location. For employees who work both at a qualified location and also
12 perform services for the taxpayer at the employee's Nebraska residence,
13 the time for which an employee is compensated for services performed at
14 the employee's Nebraska residence will be considered spent at the
15 qualified location.

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

22 (8) For purposes of this section, employed full-time means that the
23 employee is a full-time employee as defined and described in section
24 4980H of the Internal Revenue Code of 1986, as amended, and the
25 regulations for such section.

26 Sec. 19. Section 77-6828, Revised Statutes Cumulative Supplement,
27 2020, is amended to read:

28 77-6828 (1) Within ninety days after approval of the application,
29 the director shall prepare and deliver a written agreement to the
30 taxpayer for the taxpayer's signature. The taxpayer and the director
31 shall enter into such written agreement. Under the agreement, the

1 taxpayer shall agree to increase employment or investment at the
2 qualified location or locations, report compensation, wage, and hour data
3 at the qualified location or locations to the Department of Revenue
4 annually, and report all qualified property at the qualified location or
5 locations to the Department of Revenue annually. The director, on behalf
6 of the State of Nebraska, shall agree to allow the taxpayer to use the
7 incentives contained in the Imagine Nebraska Act. The application, and
8 all supporting documentation, to the extent approved, shall be considered
9 a part of the agreement. The agreement shall state:

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

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

16 (c) The date the application was complete;

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

20 (e) A requirement that the taxpayer provide any information needed
21 by the director or the Tax Commissioner to perform their respective
22 responsibilities under the Imagine Nebraska Act, in the manner specified
23 by the director or Tax Commissioner;

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

30 (g) A requirement that the taxpayer update the Tax Commissioner
31 annually, with its income tax return or in the manner specified by the

1 Tax Commissioner, on any changes in plans or circumstances which it
2 reasonably expects will affect the level of new investment and number of
3 new employees at the qualified location or locations. If the taxpayer
4 fails to comply with this requirement, the Tax Commissioner may defer any
5 pending incentive utilization until the taxpayer does comply;

6 (h) A requirement that the taxpayer provide information regarding
7 the value of health coverage provided to employees during the year who
8 are not base-year employees and who are paid the required compensation as
9 needed by the director or the Tax Commissioner to perform their
10 respective responsibilities under the Imagine Nebraska Act, in the manner
11 specified by the director or Tax Commissioner;

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

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

1 costs that employees must bear to obtain benefits not offered by an
2 employer; and -

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

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

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

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

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

30 (3) An agreement under the Imagine Nebraska Act shall have a
31 duration of no more than fifteen years. A taxpayer with an existing

1 agreement may apply for and receive a new agreement for any qualified
2 location or locations that are not part of an existing agreement under
3 the Imagine Nebraska Act, but cannot apply for a new agreement for a
4 qualified location designated in an existing agreement until after the
5 end of the performance period for the existing agreement.

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

26 Sec. 20. Section 77-6831, Revised Statutes Cumulative Supplement,
27 2020, is amended to read:

28 77-6831 (1) A taxpayer shall be entitled to the sales and use tax
29 incentives contained in subsection (2) of this section if the taxpayer:

30 (a) Attains a cumulative investment in qualified property of at
31 least five million dollars and hires at least thirty new employees at the

1 qualified location or locations before the end of the ramp-up period;

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

6 (c) Attains a cumulative investment in qualified property of at
7 least fifty million dollars at the qualified location or locations before
8 the end of the ramp-up period. To receive incentives under this
9 subdivision, the taxpayer must meet the following conditions:

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

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

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

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

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

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

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

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

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

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

25 (b) An exemption from all sales and use taxes under the Local Option
26 Revenue Act, the Nebraska Revenue Act of 1967, the Qualified Judgment
27 Payment Act, and sections 13-319, 13-324, and 13-2813 on the types of
28 purchases, including rentals, listed in subdivision (a) of this
29 subsection for such purchases, including rentals, occurring during each
30 year of the performance period in which the taxpayer is at or above the
31 required levels of employment and investment, except that the exemption

1 shall be for the actual materials purchased with respect to subdivisions
2 (2)(a)(iii), (iv), and (v) of this section. The Tax Commissioner shall
3 issue such rules, regulations, certificates, and forms as are appropriate
4 to implement the efficient use of this exemption.

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

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

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

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

1 this subdivision;

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 times the average wage of new employees times the number of new
11 employees. Wages in excess of one million dollars paid to any one
12 employee during the year shall be excluded from the calculations under
13 this subdivision; or

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

27 (b) If a taxpayer hires at least twenty new employees at the
28 qualified location or locations before the end of the ramp-up period, the
29 taxpayer shall be entitled to a credit equal to five percent times the
30 average wage of new employees times the number of new employees if the
31 average wage of the new employees equals at least one hundred percent of

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

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

29 (d) If a taxpayer attains a cumulative investment in qualified
30 property of at least two hundred fifty million dollars and hires at least
31 two hundred fifty new employees at the qualified location or locations

1 before the end of the ramp-up period, the taxpayer shall be entitled to a
2 credit equal to seven percent times the average wage of new employees
3 times the number of new employees if the average wage of the new
4 employees equals at least one hundred fifty percent of the Nebraska
5 statewide average hourly wage for the year of application. The credit
6 shall equal nine 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 two hundred percent of the Nebraska statewide average
9 hourly wage for the year of application. Wages in excess of one million
10 dollars paid to any one employee during the year shall be excluded from
11 the calculations under this subdivision; or

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

31 (5) The taxpayer shall be entitled to one of the following credits

1 for new investment:

2 (a)(i) If a 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, the taxpayer shall be entitled to a credit equal to four
6 percent of the investment made in qualified property at the qualified
7 location or locations;

8 (ii) 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 in a county in Nebraska with a population of one
13 hundred thousand or greater, and at which the majority of the business
14 activities conducted are described in subdivision (1)(a) or (1)(n) of
15 section 77-6818, the taxpayer shall be entitled to a credit equal to four
16 percent of the investment made in qualified property at the qualified
17 location or locations unless the cumulative investment exceeds ten
18 million dollars, in which case the taxpayer shall be entitled to a credit
19 equal to seven percent of the investment made in qualified property at
20 the qualified location or locations; or

21 (iii) If the taxpayer attains a cumulative investment in qualified
22 property of at least one million dollars and hires at least ten new
23 employees at the qualified location or locations before the end of the
24 ramp-up period and the number of new employees and investment are at a
25 qualified location entirely within a county in Nebraska with a population
26 of less than one hundred thousand, and at which the majority of the
27 business activities conducted are described in subdivision (1)(a) or (1)
28 (n) of section 77-6818, the taxpayer shall be entitled to a credit equal
29 to four percent of the investment made in qualified property at the
30 qualified location or locations unless the cumulative investment exceeds
31 ten million dollars, in which case the taxpayer shall be entitled to a

1 credit equal to seven percent of the investment made in qualified
2 property at the qualified location or locations. For purposes of meeting
3 the ten-employee requirement of this subdivision, the number of new
4 employees shall be multiplied by two;

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

11 (c) If a taxpayer attains a cumulative investment in qualified
12 property of at least two hundred fifty million dollars and hires at least
13 two hundred fifty new employees at the qualified location or locations
14 before the end of the ramp-up period, the taxpayer shall be entitled to a
15 credit equal to seven percent of the investment made in qualified
16 property at the qualified location or locations; or

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

1 (6)(a) The credit percentages prescribed in subdivisions (4)(a),
2 (b), (c), and (d) and subdivisions (5)(a), (b), and (c) of this section
3 shall be increased by one percentage point for wages paid and investments
4 made at qualified locations in an extremely blighted area. For purposes
5 of this subdivision, extremely blighted area means an area which, before
6 the end of the ramp-up period, has been declared an extremely blighted
7 area under section 18-2101.02.

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

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

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

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

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

21 (b) The credits prescribed in subsection (5) of this section shall
22 also be allowable during the first year of the performance period for
23 investment in qualified property at the qualified location or locations
24 after the date of the complete application and before the beginning of
25 the performance period.

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

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

1 a taxpayer who has a project qualifying under subdivision (1)(b)(ii) of
2 section 77-5725 and who files a separate sequential application for NAICS
3 code 518210 for Data Processing, Hosting, and Related Services for which
4 the ramp-up period begins with the year immediately after the end of the
5 previous project's entitlement period, such property described in
6 subdivision (8)(c)(i) of this section shall be eligible for the exemption
7 from the first January 1 following the placement in service of such
8 property through the ninth December 31 after the year the first claim for
9 exemption is approved.

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

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

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

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

23 (d) In order to receive the property tax exemptions allowed by
24 subdivision (8)(c) of this section, the taxpayer shall annually file a
25 claim for exemption with the Tax Commissioner on or before May 1. The
26 form and supporting schedules shall be prescribed by the Tax Commissioner
27 and shall list all property for which exemption is being sought under
28 this section. A separate claim for exemption must be filed for each
29 agreement and each county in which property is claimed to be exempt. A
30 copy of this form must also be filed with the county assessor in each
31 county in which the applicant is requesting exemption. The Tax

1 Commissioner shall determine whether a taxpayer is eligible to obtain
2 exemption for personal property based on the criteria for exemption and
3 the eligibility of each item listed for exemption and, on or before
4 August 1, certify such determination to the taxpayer and to the affected
5 county assessor.

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

23 Sec. 21. Section 77-6832, Revised Statutes Cumulative Supplement,
24 2020, is amended to read:

25 77-6832 (1)(a) The credits prescribed in section 77-6831 for a year
26 shall be established by filing the forms required by the Tax Commissioner
27 with the income tax return for the taxable year which includes the end of
28 the year the credits were earned. The credits may be used and shall be
29 applied in the order in which they were first allowable under the Imagine
30 Nebraska Act. To the extent the taxpayer has credits under the Nebraska
31 Advantage Act or the Employment and Investment Growth Act still available

1 for use in a year or years which overlap the performance period or
2 carryover period of the Imagine Nebraska Act, the credits may be used and
3 shall be applied in the order in which they were first allowable, and
4 when there are credits of the same age, the older tax incentive program's
5 credits shall be applied first. The credits may be used after any other
6 nonrefundable credits to reduce the taxpayer's income tax liability
7 imposed by sections 77-2714 to 77-27,135. Credits may be used beginning
8 with the taxable year which includes December 31 of the year the required
9 minimum levels were reached. The last year for which credits may be used
10 is the taxable year which includes December 31 of the last year of the
11 carryover period. Any decision on how part of the credit is applied shall
12 not limit how the remaining credit could be applied under this section.

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

1 amount that otherwise would be reported by the taxpayer, or such
2 qualified employee leasing company, to the employee under section 77-2754
3 as income tax withheld and shall not reduce the amount that otherwise
4 would be allowed by the state as a refundable credit on an employee's
5 income tax return as income tax withheld under section 77-2755. The
6 amount of credits used against income tax withholding shall not exceed
7 the withholding attributable to the number of new employees employed at
8 the qualified location or locations or, for a qualified employee leasing
9 company, the number of new employees performing services for the
10 applicable client-lessee at the qualified location or locations,
11 excluding any wages in excess of one million dollars paid to any one
12 employee during the year. If the amount of credit used by the taxpayer or
13 the qualified employee leasing company against income tax withholding
14 exceeds such amount, the excess withholding shall be returned to the
15 Department of Revenue in the manner provided in section 77-2756, such
16 excess amount returned shall be considered unused, and the amount of
17 unused credits may be used as otherwise permitted in this section or
18 shall carry over to the extent authorized in subdivision (1)(g) of this
19 section.

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

25 (d) The credits provided in subsections (4) and (5) of section
26 77-6831 may be used to repay a loan for job training or infrastructure
27 development as provided in section 77-6841.

28 (e) Credits may be used to obtain a payment from the state equal to
29 the amount which the taxpayer demonstrates to the director was paid by
30 the taxpayer after the date of the complete application for job training
31 and talent recruitment of employees who qualify in the number of new

1 employees, to the extent that proceeds from a loan described in section
2 77-6841 were not used to make such payments. For purposes of this
3 subdivision:

4 (i) Job training means training for a prospective or new employee
5 that is provided after the date of the complete application by a Nebraska
6 nonprofit college or university, a Nebraska public or private secondary
7 school, a Nebraska educational service unit, or a company that is not a
8 member of the taxpayer's unitary group or a related person to the
9 taxpayer; and

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

26 (f) The credits provided in subsections (4) and (5) of section
27 77-6831 may be used to obtain a payment from the state equal to the
28 amount which the taxpayer demonstrates to the director was paid for
29 taxpayer-sponsored child care at the qualified location or locations
30 during the performance period and the carryover period.

31 (g) Credits may be carried over until fully utilized through the end

1 of the carryover period.

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

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

8 (c) Refund claims for materials purchased by a purchasing agent
9 shall include:

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

11 (ii) The contract price; and

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

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

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

1 payments shall be subject to later recovery by the Tax Commissioner upon
2 audit.

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

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

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

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

28 (4) The determination of whether the application is complete,
29 whether a location is a qualified location, and whether to approve the
30 application and sign the agreement shall be made by the director. All
31 other interpretations of the Imagine Nebraska Act shall be made by the

1 Tax Commissioner. The Commissioner of Labor shall provide the director
2 with such information as the Department of Labor regularly receives with
3 respect to the taxpayer which the director requests from the Commissioner
4 of Labor in order to fulfill the director's duties under the act. The
5 director shall use such information to achieve efficiency in the
6 administration of the act.

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

30 (6) An audit of employment and investment thresholds and incentive
31 amounts shall be made by the Tax Commissioner to the extent and in the

1 manner determined by the Tax Commissioner. Upon request by the director
2 or the Tax Commissioner, the Commissioner of Labor shall report to the
3 director and the Tax Commissioner the employment data regularly reported
4 to the Department of Labor relating to number of employees and wages paid
5 for each taxpayer. The director and Tax Commissioner, to the extent they
6 determine appropriate, shall use such information to achieve efficiency
7 in the administration of the Imagine Nebraska Act. The Tax Commissioner
8 may recover any refund or part thereof which is erroneously made and any
9 credit or part thereof which is erroneously allowed by issuing a
10 deficiency determination within three years from the date of refund or
11 credit or within the period otherwise allowed for issuing a deficiency
12 determination, whichever expires later. The director shall not enter into
13 an agreement with any taxpayer unless the taxpayer agrees to
14 electronically verify the work eligibility status of all newly hired
15 employees employed in Nebraska within ninety days after the date of hire.
16 For purposes of calculating any tax incentive under the act, the hours
17 worked and compensation paid to an employee who has not been
18 electronically verified or who is not eligible to work in Nebraska shall
19 be excluded.

20 (7) A determination by the director that a location is not a
21 qualified location or a determination by the Tax Commissioner that a
22 taxpayer has failed to meet or maintain the required levels of employment
23 or investment for incentives, exemptions, or recapture, or does not
24 otherwise qualify for incentives or exemptions, may be protested by the
25 taxpayer to the Tax Commissioner within sixty days after the mailing to
26 the taxpayer of the written notice of the proposed determination by the
27 director or the Tax Commissioner, as applicable. If the notice of
28 proposed determination is not protested in writing by the taxpayer within
29 the sixty-day period, the proposed determination is a final
30 determination. If the notice is protested, the Tax Commissioner, after a
31 formal hearing by the Tax Commissioner or by an independent hearing

1 officer appointed by the Tax Commissioner, if requested by the taxpayer
2 in such protest, shall issue a written order resolving such protest. The
3 written order of the Tax Commissioner resolving a protest may be appealed
4 to the district court of Lancaster County in accordance with the
5 Administrative Procedure Act within thirty days after the issuance of the
6 order.

7 Sec. 22. Section 77-6837, Revised Statutes Cumulative Supplement,
8 2020, is amended to read:

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

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

24 (3) The report shall also state, for taxpayers who are parties to
25 agreements, by industry group (a) the specific incentive options applied
26 for under the Imagine Nebraska Act, (b) the refunds and reductions in tax
27 allowed on the investment, (c) the credits earned, (d) the credits used
28 to reduce the corporate income tax and the credits used to reduce the
29 individual income tax, (e) the credits used to obtain sales and use tax
30 refunds, (f) the credits used against withholding liability, (g) the
31 credits used for job training, (h) the credits used for infrastructure

1 development, (i) the number of jobs created under the act, (j) the
2 expansion of capital investment, (k) the estimated wage levels of jobs
3 created under the act subsequent to the application date, (l) the total
4 number of qualified applicants, (m) the projected future state revenue
5 gains and losses, (n) the sales tax refunds owed, (o) the credits
6 outstanding under the act, (p) the value of personal property exempted by
7 class in each county under the act, (q) the total amount of the payments,
8 (r) the amount of workforce training and infrastructure development loans
9 issued, outstanding, repaid, and delinquent, and (s) the value of health
10 coverage provided to employees at qualified locations during the year who
11 are not base-year employees and who are paid the required compensation.
12 The report shall include the estimate of the amount of sales and use tax
13 refunds to be paid and tax credits to be used as were required for the
14 October forecast under section 77-6839.

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

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

29 (6) The report shall provide information on agreement-specific total
30 incentives used every two years for each agreement. The report shall
31 disclose (a) the identity of the taxpayer, (b) the qualified location or

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

13 (7) The report shall include an executive summary which shows
14 aggregate information for all agreements for which the information on
15 incentives used in subsection (6) of this section is reported as follows:

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

27 (8) No information shall be provided in the report or in
28 supplemental information that is protected by state or federal
29 confidentiality laws.

30 Sec. 23. Section 77-6839, Revised Statutes Cumulative Supplement,
31 2020, is amended to read:

1 77-6839 (1) The Department of Economic Development and the
2 Department of Revenue shall jointly, on or before the fifteenth day of
3 October and February of every year and the fifteenth day of April in odd-
4 numbered years, make an estimate of the amount of sales and use tax
5 refunds to be paid and tax credits to be used under the ImagiNE Nebraska
6 Act during the fiscal years to be forecast under section 77-27,158. The
7 estimate shall be based on the most recent data available, including
8 pending and approved applications and updates thereof as are required by
9 subdivision (1)(f) of section 77-6828. The estimate shall be forwarded to
10 the Legislative Fiscal Analyst and the Nebraska Economic Forecasting
11 Advisory Board and made a part of the advisory forecast required by
12 section 77-27,158.

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

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

27 (ii) The director shall not approve any additional applications
28 under the ImagiNE Nebraska Act that would include refunds or credits in
29 the calendar year in which the base authority is projected to be
30 exceeded. Applications shall be considered in the order in which they are
31 received. Any applications that are not approved because the base

1 authority has been exceeded shall be placed on a wait list in the order
2 in which they were received and shall be given first priority once
3 applications may again be approved. Applications on the wait list retain
4 the same application date and base year as if they had been approved
5 within the time set forth in section 77-6827.

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

23 Sec. 24. Sections 2, 3, 7, 8, 9, 10, 11, 13, and 27 of this act
24 become operative on January 1, 2023. Sections 16, 18, 19, and 26 of this
25 act become operative three calendar months after the adjournment of this
26 legislative session. The other sections of this act become operative on
27 their effective date.

28 Sec. 25. Original sections 77-376, 77-27,195, 77-4110, 77-4933,
29 77-5731, and 77-5807, Reissue Revised Statutes of Nebraska, sections
30 77-6811, 77-6831, 77-6832, 77-6837, and 77-6839, Revised Statutes
31 Cumulative Supplement, 2020, and section 77-5907, Revised Statutes

1 Supplement, 2021, are repealed.

2 Sec. 26. Original sections 77-6805, 77-6815, and 77-6828, Revised
3 Statutes Cumulative Supplement, 2020, are repealed.

4 Sec. 27. Original sections 77-5705, 77-5723, 77-5727, and 77-5735,
5 Reissue Revised Statutes of Nebraska, sections 77-2708, 77-5725, and
6 77-5726, Revised Statutes Cumulative Supplement, 2020, and section
7 77-27,144, Revised Statutes Supplement, 2021, are repealed.

8 Sec. 28. Since an emergency exists, this act takes effect when
9 passed and approved according to law.