

LEGISLATURE OF NEBRASKA

ONE HUNDRED SECOND LEGISLATURE

FIRST SESSION

LEGISLATIVE BILL 362

Introduced by Cornett, 45.

Read first time January 13, 2011

Committee: Revenue

A BILL

1 FOR AN ACT relating to the Nebraska Advantage Act; to amend sections
2 77-5708, 77-5714, 77-5723, and 77-5727, Reissue Revised
3 Statutes of Nebraska, and sections 77-5715 and 77-5725,
4 Revised Statutes Cumulative Supplement, 2010; to provide
5 tax incentives for renewable energy projects as
6 prescribed; to redefine terms; to harmonize provisions;
7 and to repeal the original sections.
8 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 77-5708, Reissue Revised Statutes of
2 Nebraska, is amended to read:

3 77-5708 Entitlement period, for a tier 1 or tier 3
4 project, means the year during which the required increases in
5 employment and investment were met or exceeded and each year
6 thereafter until the end of the ninth year following the year of
7 application or the sixth year after the year the required increases
8 were met or exceeded, whichever is sooner. Entitlement period, for a
9 tier 2, tier 4, ~~or tier 5,~~ or tier 7 project, means the year during
10 which the required increases in employment and investment were met or
11 exceeded and each year thereafter until the end of the sixth year
12 after the year the required increases were met or exceeded.
13 Entitlement period, for a tier 6 project, means the year during which
14 the required increases in employment and investment were met or
15 exceeded and each year thereafter until the end of the ninth year
16 after the year the required increases were met or exceeded.

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

19 77-5714 (1) Number of new employees, for a tier 1, tier
20 2, tier 3, ~~or tier 4,~~ or tier 7 project, means the number of
21 equivalent employees that are employed at the project during a year
22 that are in excess of the number of equivalent employees during the
23 base year, not to exceed the number of equivalent employees employed
24 at the project during a year who are not base-year employees and who
25 are paid wages at a rate equal to at least sixty percent of the

1 Nebraska average weekly wage for the year of application.

2 (2) Number of new employees, for a tier 6 project, means
3 the number of equivalent employees that are employed at the project
4 during a year that are in excess of the number of equivalent
5 employees during the base year, not to exceed the number of
6 equivalent employees employed at the project during a year who are
7 not base-year employees and who are paid at a rate equal to or
8 greater than the tier 6 weekly required compensation for the year of
9 application.

10 (3) Teleworkers working for wages or salaries in Nebraska
11 from their residences for a taxpayer on tasks interdependent with the
12 work performed at the project shall be considered to be employed at
13 the project.

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

18 Sec. 3. Section 77-5715, Revised Statutes Cumulative
19 Supplement, 2010, is amended to read:

20 77-5715 (1) For a tier 2, tier 3, tier 4, or tier 5
21 project, qualified business means any business engaged in:

22 (a) The conducting of research, development, or testing
23 for scientific, agricultural, animal husbandry, food product, or
24 industrial purposes;

25 (b) The performance of data processing,

1 telecommunication, insurance, or financial services. For purposes of
2 this subdivision, financial services includes only financial services
3 provided by any financial institution subject to tax under Chapter
4 77, article 38, or any person or entity licensed by the Department of
5 Banking and Finance or the federal Securities and Exchange Commission
6 and telecommunication services includes community antenna television
7 service, Internet access, satellite ground station, data center, call
8 center, or telemarketing;

9 (c) The assembly, fabrication, manufacture, or processing
10 of tangible personal property;

11 (d) The administrative management of the taxpayer's
12 activities, including headquarter facilities relating to such
13 activities or the administrative management of any of the activities
14 of any business entity or entities in which the taxpayer or a group
15 of its shareholders holds any direct or indirect ownership interest
16 of at least ten percent, including headquarter facilities relating to
17 such activities;

18 (e) The storage, warehousing, distribution,
19 transportation, or sale of tangible personal property;

20 (f) The sale of tangible personal property if the
21 taxpayer derives at least seventy-five percent or more of the sales
22 or revenue attributable to such activities relating to the project
23 from sales to consumers who are not related persons and are located
24 outside the state;

25 (g) The sale of software development services, computer

1 systems design, product testing services, or guidance or surveillance
2 systems design services or the licensing of technology if the
3 taxpayer derives at least seventy-five percent of the sales or
4 revenue attributable to such activities relating to the project from
5 sales or licensing either to customers who are not related persons
6 and located outside the state or to the United States Government,
7 including sales of such services, systems, or products delivered by
8 providing the customer with software or access to software over the
9 Internet or by other electronic means, regardless of whether the
10 software or data accessed by customers is stored on a computer owned
11 by the applicant, the customer, or a third party and regardless of
12 whether the computer storing the software or data is located at the
13 project;

14 (h) The research, development, and maintenance of an
15 Internet web portal. For purposes of this subdivision, Internet web
16 portal means an Internet site that allows users to access, search,
17 and navigate the Internet;

18 (i) The research, development, and maintenance of a data
19 center. For purposes of this subdivision, data center means a group
20 of computers, supporting equipment, and other organized assembly of
21 hardware or software in one or more interrelated physical locations
22 that is designed to centralize the storage, management, or
23 dissemination of data and information; or

24 (j) Any combination of the activities listed in this
25 subsection.

1 (2) For a tier 1 project, qualified business means any
2 business engaged in:

3 (a) The conducting of research, development, or testing
4 for scientific, agricultural, animal husbandry, food product, or
5 industrial purposes;

6 (b) The assembly, fabrication, manufacture, or processing
7 of tangible personal property;

8 (c) The sale of software development services, computer
9 systems design, product testing services, or guidance or surveillance
10 systems design services or the licensing of technology if the
11 taxpayer derives at least seventy-five percent of the sales or
12 revenue attributable to such activities relating to the project from
13 sales or licensing either to customers who are not related persons
14 and are located outside the state or to the United States Government,
15 including sales of such services, systems, or products delivered by
16 providing the customer with software or access to software over the
17 Internet or by other electronic means, regardless of whether the
18 software or data accessed by customers is stored on a computer owned
19 by the applicant, the customer, or a third party and regardless of
20 whether the computer storing the software or data is located at the
21 project; or

22 (d) Any combination of activities listed in this
23 subsection.

24 (3) For a tier 6 project, qualified business means any
25 business except a business excluded by subsection ~~(4)~~(5) of this

1 section.

2 (4) For a tier 7 project, qualified business means any
3 business engaged in the production of electricity by using one or
4 more sources of renewable energy to produce electricity for sale. For
5 purposes of this subsection, sources of renewable energy mean wind,
6 solar, geothermal, hydroelectric, and biomass.

7 ~~(4)~~—(5) Except for business activity described in
8 subdivision (1)(f) of this section, qualified business does not
9 include any business activity in which eighty percent or more of the
10 total sales are sales to the ultimate consumer of (a) food prepared
11 for immediate consumption or (b) tangible personal property which is
12 not assembled, fabricated, manufactured, or processed by the taxpayer
13 or used by the purchaser in any of the activities listed in
14 subsection (1) or (2) of this section.

15 Sec. 4. Section 77-5723, Reissue Revised Statutes of
16 Nebraska, is amended to read:

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

21 (2) The application shall contain:

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

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

1 project;

2 (c) If more than one location within this state is
3 involved, sufficient documentation to show that the employment and
4 investment at different locations are interdependent parts of the
5 plan. A headquarters shall be presumed to be interdependent with each
6 other location directly controlled by such headquarters. A showing
7 that the parts of the plan would be considered parts of a unitary
8 business for corporate income tax purposes shall not be sufficient to
9 show interdependence for the purposes of this subdivision;

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

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

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

23 (3) An application must be complete to establish the date
24 of the application. An application shall be considered complete once
25 it contains the items listed in subsection (2) of this section,

1 regardless of the Tax Commissioner's additional needs pertaining to
2 information or clarification in order to approve or not approve the
3 application.

4 (4) Once satisfied that the plan in the application
5 defines a project consistent with the purposes stated in the Nebraska
6 Advantage Act in one or more qualified business activities within
7 this state, that the taxpayer and the plan will qualify for benefits
8 under the act, and that the required levels of employment and
9 investment for the project will be met prior to the end of the fourth
10 year after the year in which the application was submitted for a tier
11 1, tier 3, ~~or tier 6,~~ or tier 7 project or the end of the sixth year
12 after the year in which the application was submitted for a tier 2,
13 tier 4, or tier 5 project, the Tax Commissioner shall approve the
14 application.

15 (5) After approval, the taxpayer and the Tax Commissioner
16 shall enter into a written agreement. The taxpayer shall agree to
17 complete the project, and the Tax Commissioner, on behalf of the
18 State of Nebraska, shall designate the approved plan of the taxpayer
19 as a project and, in consideration of the taxpayer's agreement, agree
20 to allow the taxpayer to use the incentives contained in the Nebraska
21 Advantage Act. The application, and all supporting documentation, to
22 the extent approved, shall be considered a part of the agreement. The
23 agreement shall state:

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

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

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

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

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

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

1 preclude investment and employment from being considered new
2 investment or employment under the Nebraska Advantage Act. The use of
3 property tax exemptions at the project under the Employment and
4 Investment Growth Act shall not preclude investment not eligible for
5 the property tax exemption from being considered new investment under
6 the Nebraska Advantage Act.

7 (7) A taxpayer and the Tax Commissioner may enter into
8 agreements for more than one project and may include more than one
9 project in a single agreement. The projects may be either sequential
10 or concurrent. A project may involve the same location as another
11 project. No new employment or new investment shall be included in
12 more than one project for either the meeting of the employment or
13 investment requirements or the creation of credits. When projects
14 overlap and the plans do not clearly specify, then the taxpayer shall
15 specify in which project the employment or investment belongs.

16 (8) The taxpayer may request that an agreement be
17 modified if the modification is consistent with the purposes of the
18 act and does not require a change in the description of the project.
19 An agreement may not be modified to a tier that would grant a higher
20 level of benefits to the taxpayer or to a tier 1 project. Once
21 satisfied that the modification to the agreement is consistent with
22 the purposes stated in the act, the Tax Commissioner and taxpayer may
23 amend the agreement. For a tier 6 project, the taxpayer must agree to
24 limit the project to qualified activities allowable under tier 2 and
25 tier 4.

1 Sec. 5. Section 77-5725, Revised Statutes Cumulative
2 Supplement, 2010, is amended to read:

3 77-5725 (1) Applicants may qualify for benefits under the
4 Nebraska Advantage Act in one of ~~six~~seven tiers:

5 (a) Tier 1, investment in qualified property of at least
6 one million dollars and the hiring of at least ten new employees.
7 There shall be no new project applications for benefits under this
8 tier filed after December 31, 2015, without further authorization of
9 the Legislature. All complete project applications filed on or before
10 December 31, 2015, shall be considered by the Tax Commissioner and
11 approved if the project and taxpayer qualify for benefits. Agreements
12 may be executed with regard to completed project applications filed
13 on or before December 31, 2015. All project agreements pending,
14 approved, or entered into before such date shall continue in full
15 force and effect;

16 (b) Tier 2, investment in qualified property of at least
17 three million dollars and the hiring of at least thirty new
18 employees;

19 (c) Tier 3, the hiring of at least thirty new employees.
20 There shall be no new project applications for benefits under this
21 tier filed after December 31, 2015, without further authorization of
22 the Legislature. All complete project applications filed on or before
23 December 31, 2015, shall be considered by the Tax Commissioner and
24 approved if the project and taxpayer qualify for benefits. Agreements
25 may be executed with regard to completed project applications filed

1 on or before December 31, 2015. All project agreements pending,
2 approved, or entered into before such date shall continue in full
3 force and effect;

4 (d) Tier 4, investment in qualified property of at least
5 ten million dollars and the hiring of at least one hundred new
6 employees;

7 (e) Tier 5, investment in qualified property of at least
8 thirty million dollars. Failure to maintain an average number of
9 equivalent employees as defined in section 77-5727 greater than or
10 equal to the number of equivalent employees in the base year shall
11 result in a partial recapture of benefits; and

12 (f) Tier 6, investment in qualified property of at least
13 ten million dollars and the hiring of at least seventy-five new
14 employees or the investment in qualified property of at least one
15 hundred million dollars and the hiring of at least fifty new
16 employees. Agreements may be executed with regard to completed
17 project applications filed before January 1, 2016. All project
18 agreements pending, approved, or entered into before such date shall
19 continue in full force and effect; and -

20 (g) Tier 7, investment in qualified property of at least
21 XXX million dollars and the hiring of at least XXX new employees.
22 Agreements may be executed with regard to completed project
23 applications filed before January 1, 2019. All project agreements
24 pending, approved, or entered into before such date shall continue in
25 full force and effect.

1 (2) When the taxpayer has met the required levels of
2 employment and investment contained in the agreement for a tier 1,
3 tier 2, tier 4, tier 5, ~~or tier 6,~~ or tier 7 project, the taxpayer
4 shall be entitled to the following incentives:

5 (a) A refund of all sales and use taxes for a tier 2,
6 tier 4, tier 5, ~~or tier 6,~~ or tier 7 project or a refund of one-half
7 of all sales and use taxes for a tier 1 project paid under the Local
8 Option Revenue Act, the Nebraska Revenue Act of 1967, and sections
9 13-319, 13-324, and 13-2813 from the date of the application through
10 the meeting of the required levels of employment and investment for
11 all purchases, including rentals, of:

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

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

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

23 (iv) Tangible personal property by a contractor or
24 repairperson after appointment as a purchasing agent of the taxpayer
25 when such property is annexed to, but not incorporated into, real

1 estate as a part of a project. The refund shall be based on the cost
2 of materials subject to the sales and use tax that were annexed to
3 real estate; and

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

11 (b) A refund of all sales and use taxes for a tier 2,
12 tier 4, tier 5, ~~or tier 6,~~ or tier 7 project or a refund of one-half
13 of all sales and use taxes for a tier 1 project paid under the Local
14 Option Revenue Act, the Nebraska Revenue Act of 1967, and sections
15 13-319, 13-324, and 13-2813 on the types of purchases, including
16 rentals, listed in subdivision (a) of this subsection for such taxes
17 paid during each year of the entitlement period in which the taxpayer
18 is at or above the required levels of employment and investment.

19 (3) Any taxpayer who qualifies for a tier 1, tier 2, tier
20 3, or tier 4 project shall be entitled to a credit equal to three
21 percent times the average wage of new employees times the number of
22 new employees if the average wage of the new employees equals at
23 least sixty percent of the Nebraska average annual wage for the year
24 of application. The credit shall equal four percent times the average
25 wage of new employees times the number of new employees if the

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

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

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

25 (c) Nebraska average annual wage means the Nebraska

1 average weekly wage times fifty-two.

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

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

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

22 (7) The credit prescribed in subsection (5) of this
23 section shall also be allowable during the first year of the
24 entitlement period for investment in qualified property at the
25 project after the date of the application and before the required

1 levels of employment and investment were met.

2 (8)(a) A taxpayer who has met the required levels of
3 employment and investment for a tier 4 or tier 6 project shall
4 receive the incentive provided in this subsection. A taxpayer who has
5 a project for an Internet web portal or a data center and who has met
6 the required levels of employment and investment for a tier 2 project
7 or the required level of investment for a tier 5 project shall
8 receive the incentive provided in this subsection for property in
9 subdivision (8)(b)(ii) of this section. Such investment and hiring of
10 new employees shall be considered a required level of investment and
11 employment for this subsection and for the recapture of benefits
12 under this subsection only.

13 (b) The following property used in connection with such
14 project or projects and acquired by the taxpayer, whether by lease or
15 purchase, after the date the application was filed shall constitute
16 separate classes of personal property:

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

21 (ii) Computer systems, made up of equipment that is
22 interconnected in order to enable the acquisition, storage,
23 manipulation, management, movement, control, display, transmission,
24 or reception of data involving computer software and hardware, used
25 for business information processing which require environmental

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

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

12 (iv) Personal property which is business equipment
13 located in a single project if the business equipment is involved
14 directly in the manufacture or processing of agricultural products;
15 and

16 (v) For a tier 6 project, any other personal property
17 located at the project.

18 (c) Such property shall be eligible for exemption from
19 the tax on personal property from the first January 1 following the
20 date of acquisition for property in subdivision (8)(b)(i) of this
21 section, or from the first January 1 following the end of the year
22 during which the required levels were exceeded for property in
23 subdivisions (8)(b)(ii), (iii), (iv), and (v) of this section,
24 through the ninth December 31 after the first year any property
25 included in subdivisions (8)(b)(ii), (iii), (iv), and (v) of this

1 section qualifies for the exemption. In order to receive the property
2 tax exemptions allowed by subdivision (8)(b) of this section, the
3 taxpayer shall annually file a claim for exemption with the Tax
4 Commissioner on or before May 1. The form and supporting schedules
5 shall be prescribed by the Tax Commissioner and shall list all
6 property for which exemption is being sought under this section. A
7 separate claim for exemption must be filed for each project and each
8 county in which property is claimed to be exempt. A copy of this form
9 must also be filed with the county assessor in each county in which
10 the applicant is requesting exemption. The Tax Commissioner shall
11 determine the eligibility of each item listed for exemption and, on
12 or before August 1, certify such to the taxpayer and to the affected
13 county assessor. In determining the eligibility of items of personal
14 property for exemption, the Tax Commissioner is limited to the
15 question of whether the property claimed as exempt by the taxpayer
16 falls within the classes of property described in subdivision (8)(b)
17 of this section. The determination of whether a taxpayer is eligible
18 to obtain exemption for personal property based on meeting the
19 required levels of investment and employment is the responsibility of
20 the Tax Commissioner.

21 (9)(a) The investment thresholds in this section for a
22 particular year of application shall be adjusted by the method
23 provided in this subsection.

24 (b) For tier 1, tier 2, tier 4, and tier 5, beginning
25 October 1, 2006, and each October 1 thereafter, the average Producer

1 Price Index for all commodities, published by the United States
2 Department of Labor, Bureau of Labor Statistics, for the most recent
3 twelve available periods shall be divided by the Producer Price Index
4 for the first quarter of 2006 and the result multiplied by the
5 applicable investment threshold. The investment thresholds shall be
6 adjusted for cumulative inflation since 2006.

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

15 (d) For tier 7, beginning October 1, 2011, and each
16 October 1 thereafter, the average Producer Price Index for all
17 commodities, published by the United States Department of Labor,
18 Bureau of Labor Statistics, for the most recent twelve available
19 periods shall be divided by the Producer Price Index for the first
20 quarter of 2011 and the result multiplied by the applicable
21 investment threshold. The investment thresholds shall be adjusted for
22 cumulative inflation since 2011.

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

1 ~~(e)~~(f) The investment thresholds established by this
2 subsection apply for purposes of project qualifications for all
3 applications filed on or after January 1 of the following year for
4 all years of the project. Adjustments do not apply to projects after
5 the year of application.

6 Sec. 6. Section 77-5727, Reissue Revised Statutes of
7 Nebraska, is amended to read:

8 77-5727 (1)(a) If the taxpayer fails either to meet the
9 required levels of employment or investment for the applicable
10 project by the end of the fourth year after the end of the year the
11 application was submitted for a tier 1, tier 3, ~~or~~ tier 6, or tier 7
12 project or by the end of the sixth year after the end of the year the
13 application was submitted for a tier 2, tier 4, or tier 5 project or
14 to utilize such project in a qualified business at employment and
15 investment levels at or above those required in the agreement for the
16 entire entitlement period, all or a portion of the incentives set
17 forth in the Nebraska Advantage Act shall be recaptured or
18 disallowed.

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

23 (2) In the case of a taxpayer who has failed to maintain
24 the project at the required levels of employment or investment for
25 the entire entitlement period, any reduction in the personal property

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

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

1 of equivalent employees employed in the base year. For purposes of
2 this subsection, the average number of equivalent employees shall be
3 calculated at the end of the entitlement period by adding the number
4 of equivalent employees in the year the taxpayer attains the required
5 level of investment and each of the next following six years and
6 dividing the result by seven.

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

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

20 (6) Any personal property tax that would have been due
21 except for the exemption allowed under the Nebraska Advantage Act, to
22 the extent it becomes due under this section, shall be considered
23 delinquent and shall be immediately due and payable to the county or
24 counties in which the property was located when exempted. All amounts
25 received by a county under this section shall be allocated to each

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

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

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

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

15 Sec. 7. Original sections 77-5708, 77-5714, 77-5723, and
16 77-5727, Reissue Revised Statutes of Nebraska, and sections 77-5715
17 and 77-5725, Revised Statutes Cumulative Supplement, 2010, are
18 repealed.