

LEGISLATURE OF NEBRASKA  
ONE HUNDRED FOURTH LEGISLATURE  
FIRST SESSION

**LEGISLATIVE BILL 424**

Introduced by Davis, 43; Haar, 21; Kolowski, 31; Mello, 5; Nordquist, 7.  
Read first time January 16, 2015

Committee: Revenue

1 A BILL FOR AN ACT relating to revenue and taxation; to amend section  
2 13-518, Reissue Revised Statutes of Nebraska, and sections 77-105,  
3 77-202, 77-6201, 77-6202, 77-6203, and 77-6204, Revised Statutes  
4 Cumulative Supplement, 2014; to change provisions relating to the  
5 nameplate capacity tax; to redefine terms; to change a property tax  
6 exemption; to harmonize provisions; to provide an operative date;  
7 and to repeal the original sections.  
8 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 13-518, Reissue Revised Statutes of Nebraska, is  
2 amended to read:

3 13-518 For purposes of sections 13-518 to 13-522:

4 (1) Allowable growth means (a) for governmental units other than  
5 community colleges, the percentage increase in taxable valuation in  
6 excess of the base limitation established under section 77-3446, if any,  
7 due to improvements to real property as a result of new construction,  
8 additions to existing buildings, any improvements to real property which  
9 increase the value of such property, and any increase in valuation due to  
10 annexation and any personal property valuation over the prior year and  
11 (b) for community colleges, the percentage increase in excess of the base  
12 limitation, if any, in full-time equivalent students from the second year  
13 to the first year preceding the year for which the budget is being  
14 determined;

15 (2) Capital improvements means (a) acquisition of real property or  
16 (b) acquisition, construction, or extension of any improvements on real  
17 property;

18 (3) Governing body has the same meaning as in section 13-503;

19 (4) Governmental unit means every political subdivision which has  
20 authority to levy a property tax or authority to request levy authority  
21 under section 77-3443 except sanitary and improvement districts which  
22 have been in existence for five years or less and school districts;

23 (5) Qualified sinking fund means a fund or funds maintained  
24 separately from the general fund to pay for acquisition or replacement of  
25 tangible personal property with a useful life of five years or more which  
26 is to be undertaken in the future but is to be paid for in part or in  
27 total in advance using periodic payments into the fund. The term includes  
28 sinking funds under subdivision (13) of section 35-508 for firefighting  
29 and rescue equipment or apparatus;

30 (6) Restricted funds means (a) property tax, excluding any amounts  
31 refunded to taxpayers, (b) payments in lieu of property taxes, (c) local

1 option sales taxes, (d) motor vehicle taxes, (e) state aid, (f) transfers  
2 of surpluses from any user fee, permit fee, or regulatory fee if the fee  
3 surplus is transferred to fund a service or function not directly related  
4 to the fee and the costs of the activity funded from the fee, (g) any  
5 funds excluded from restricted funds for the prior year because they were  
6 budgeted for capital improvements but which were not spent and are not  
7 expected to be spent for capital improvements, (h) the tax provided in  
8 sections 77-27,223 to 77-27,227 beginning in the second fiscal year in  
9 which the county will receive a full year of receipts, and (i) any excess  
10 tax collections returned to the county under section 77-1776. Funds  
11 received pursuant to the nameplate capacity tax levied under section  
12 77-6203 for the first five years after a renewable ~~wind~~ energy generation  
13 facility has been commissioned are nonrestricted funds; and

14 (7) State aid means:

15 (a) For all governmental units, state aid paid pursuant to sections  
16 60-3,202 and 77-3523;

17 (b) For municipalities, state aid to municipalities paid pursuant to  
18 sections 18-2605, 39-2501 to 39-2520, 60-3,190, and 77-27,139.04 and  
19 insurance premium tax paid to municipalities;

20 (c) For counties, state aid to counties paid pursuant to sections  
21 39-2501 to 39-2520 and 60-3,184 to 60-3,190, insurance premium tax paid  
22 to counties, and reimbursements to counties from funds appropriated  
23 pursuant to section 29-3933;

24 (d) For community colleges, (i) for fiscal years 2010-11, 2011-12,  
25 and 2012-13, state aid to community colleges paid pursuant to section  
26 90-517 and (ii) for fiscal year 2013-14 and each fiscal year thereafter,  
27 state aid to community colleges paid pursuant to the Community College  
28 Aid Act;

29 (e) For educational service units, state aid appropriated under  
30 sections 79-1241.01 and 79-1241.03; and

31 (f) For local public health departments as defined in section

1 71-1626, state aid as distributed under section 71-1628.08.

2 Sec. 2. Section 77-105, Revised Statutes Cumulative Supplement,  
3 2014, is amended to read:

4 77-105 The term tangible personal property includes all personal  
5 property possessing a physical existence, excluding money. The term  
6 tangible personal property also includes trade fixtures, which means  
7 machinery and equipment, regardless of the degree of attachment to real  
8 property, used directly in commercial, manufacturing, or processing  
9 activities conducted on real property, regardless of whether the real  
10 property is owned or leased, and all depreciable tangible personal  
11 property described in subsection (9) of section 77-202 used in the  
12 generation of electricity using wind, solar, biomass, or landfill gas as  
13 the fuel source. The term intangible personal property includes all other  
14 personal property, including money.

15 Sec. 3. Section 77-202, Revised Statutes Cumulative Supplement,  
16 2014, is amended to read:

17 77-202 (1) The following property shall be exempt from property  
18 taxes:

19 (a) Property of the state and its governmental subdivisions to the  
20 extent used or being developed for use by the state or governmental  
21 subdivision for a public purpose. For purposes of this subdivision:

22 (i) Property of the state and its governmental subdivisions means  
23 (A) property held in fee title by the state or a governmental subdivision  
24 or (B) property beneficially owned by the state or a governmental  
25 subdivision in that it is used for a public purpose and is being acquired  
26 under a lease-purchase agreement, financing lease, or other instrument  
27 which provides for transfer of legal title to the property to the state  
28 or a governmental subdivision upon payment of all amounts due thereunder.  
29 If the property to be beneficially owned by a governmental subdivision  
30 has a total acquisition cost that exceeds the threshold amount or will be  
31 used as the site of a public building with a total estimated construction

1 cost that exceeds the threshold amount, then such property shall qualify  
2 for an exemption under this section only if the question of acquiring  
3 such property or constructing such public building has been submitted at  
4 a primary, general, or special election held within the governmental  
5 subdivision and has been approved by the voters of the governmental  
6 subdivision. For purposes of this subdivision, threshold amount means the  
7 greater of fifty thousand dollars or six-tenths of one percent of the  
8 total actual value of real and personal property of the governmental  
9 subdivision that will beneficially own the property as of the end of the  
10 governmental subdivision's prior fiscal year; and

11 (ii) Public purpose means use of the property (A) to provide public  
12 services with or without cost to the recipient, including the general  
13 operation of government, public education, public safety, transportation,  
14 public works, civil and criminal justice, public health and welfare,  
15 developments by a public housing authority, parks, culture, recreation,  
16 community development, and cemetery purposes, or (B) to carry out the  
17 duties and responsibilities conferred by law with or without  
18 consideration. Public purpose does not include leasing of property to a  
19 private party unless the lease of the property is at fair market value  
20 for a public purpose. Leases of property by a public housing authority to  
21 low-income individuals as a place of residence are for the authority's  
22 public purpose;

23 (b) Unleased property of the state or its governmental subdivisions  
24 which is not being used or developed for use for a public purpose but  
25 upon which a payment in lieu of taxes is paid for public safety, rescue,  
26 and emergency services and road or street construction or maintenance  
27 services to all governmental units providing such services to the  
28 property. Except as provided in Article VIII, section 11, of the  
29 Constitution of Nebraska, the payment in lieu of taxes shall be based on  
30 the proportionate share of the cost of providing public safety, rescue,  
31 or emergency services and road or street construction or maintenance

1 services unless a general policy is adopted by the governing body of the  
2 governmental subdivision providing such services which provides for a  
3 different method of determining the amount of the payment in lieu of  
4 taxes. The governing body may adopt a general policy by ordinance or  
5 resolution for determining the amount of payment in lieu of taxes by  
6 majority vote after a hearing on the ordinance or resolution. Such  
7 ordinance or resolution shall nevertheless result in an equitable  
8 contribution for the cost of providing such services to the exempt  
9 property;

10 (c) Property owned by and used exclusively for agricultural and  
11 horticultural societies;

12 (d) Property owned by educational, religious, charitable, or  
13 cemetery organizations, or any organization for the exclusive benefit of  
14 any such educational, religious, charitable, or cemetery organization,  
15 and used exclusively for educational, religious, charitable, or cemetery  
16 purposes, when such property is not (i) owned or used for financial gain  
17 or profit to either the owner or user, (ii) used for the sale of  
18 alcoholic liquors for more than twenty hours per week, or (iii) owned or  
19 used by an organization which discriminates in membership or employment  
20 based on race, color, or national origin. For purposes of this  
21 subdivision, educational organization means (A) an institution operated  
22 exclusively for the purpose of offering regular courses with systematic  
23 instruction in academic, vocational, or technical subjects or assisting  
24 students through services relating to the origination, processing, or  
25 guarantying of federally reinsured student loans for higher education or  
26 (B) a museum or historical society operated exclusively for the benefit  
27 and education of the public. For purposes of this subdivision, charitable  
28 organization means an organization operated exclusively for the purpose  
29 of the mental, social, or physical benefit of the public or an indefinite  
30 number of persons; and

31 (e) Household goods and personal effects not owned or used for

1 financial gain or profit to either the owner or user.

2 (2) The increased value of land by reason of shade and ornamental  
3 trees planted along the highway shall not be taken into account in the  
4 valuation of land.

5 (3) Tangible personal property which is not depreciable tangible  
6 personal property as defined in section 77-119 shall be exempt from  
7 property tax.

8 (4) Motor vehicles required to be registered for operation on the  
9 highways of this state shall be exempt from payment of property taxes.

10 (5) Business and agricultural inventory shall be exempt from the  
11 personal property tax. For purposes of this subsection, business  
12 inventory includes personal property owned for purposes of leasing or  
13 renting such property to others for financial gain only if the personal  
14 property is of a type which in the ordinary course of business is leased  
15 or rented thirty days or less and may be returned at the option of the  
16 lessee or renter at any time and the personal property is of a type which  
17 would be considered household goods or personal effects if owned by an  
18 individual. All other personal property owned for purposes of leasing or  
19 renting such property to others for financial gain shall not be  
20 considered business inventory.

21 (6) Any personal property exempt pursuant to subsection (2) of  
22 section 77-4105 or section 77-5209.02 shall be exempt from the personal  
23 property tax.

24 (7) Livestock shall be exempt from the personal property tax.

25 (8) Any personal property exempt pursuant to the Nebraska Advantage  
26 Act shall be exempt from the personal property tax.

27 (9) Any depreciable tangible personal property used directly in the  
28 generation of electricity using wind as the fuel source shall be exempt  
29 from the property tax levied on depreciable tangible personal property.

30 Any depreciable tangible personal property used directly in the  
31 generation of electricity using solar, biomass, or landfill gas as the

1 fuel source shall be exempt from the property tax levied on depreciable  
2 tangible personal property if such depreciable tangible personal property  
3 was installed on or after the operative date of this act and has a  
4 nameplate capacity of one hundred kilowatts or more. Depreciable tangible  
5 personal property used directly in the generation of electricity using  
6 wind, solar, biomass, or landfill gas as the fuel source includes, but is  
7 not limited to, wind turbines, rotors and blades, towers, solar panels,  
8 trackers, generating equipment, transmission components, substations,  
9 supporting structures or racks, inverters, and other system components  
10 such as wiring, control systems, switchgears, and generator step-up  
11 transformers.

12 (10) Any tangible personal property that is acquired by a person  
13 operating a data center located in this state, that is assembled,  
14 engineered, processed, fabricated, manufactured into, attached to, or  
15 incorporated into other tangible personal property, both in component  
16 form or that of an assembled product, for the purpose of subsequent use  
17 at a physical location outside this state by the person operating a data  
18 center shall be exempt from the personal property tax. Such exemption  
19 extends to keeping, retaining, or exercising any right or power over  
20 tangible personal property in this state for the purpose of subsequently  
21 transporting it outside this state for use thereafter outside this state.  
22 For purposes of this subsection, data center means computers, supporting  
23 equipment, and other organized assembly of hardware or software that are  
24 designed to centralize the storage, management, or dissemination of data  
25 and information, environmentally controlled structures or facilities or  
26 interrelated structures or facilities that provide the infrastructure for  
27 housing the equipment, such as raised flooring, electricity supply,  
28 communication and data lines, Internet access, cooling, security, and  
29 fire suppression, and any building housing the foregoing.

30 Sec. 4. Section 77-6201, Revised Statutes Cumulative Supplement,  
31 2014, is amended to read:



1 77-6201 The Legislature finds and declares:

2 (1) The purpose of the nameplate capacity tax levied under section  
3 77-6203 is to replace property taxes currently imposed on renewable  
4 energy wind infrastructure and depreciated over a short period of time in  
5 a way that causes local budgeting challenges and increases upfront costs  
6 for renewable energy wind developers;

7 (2) The nameplate capacity tax should be competitive with taxes  
8 imposed directly and indirectly on renewable energy wind generation and  
9 development in other states;

10 (3) The nameplate capacity tax should be fair and nondiscriminatory  
11 when compared with other taxes imposed on other industries in the state;  
12 and

13 (4) The nameplate capacity tax should not be singled out as a source  
14 of General Fund revenue during times of economic hardship.

15 Sec. 5. Section 77-6202, Revised Statutes Cumulative Supplement,  
16 2014, is amended to read:

17 77-6202 For purposes of sections 77-6201 to 77-6204:

18 (1) Commissioned means the renewable energy wind turbine of a wind  
19 generation facility has been in commercial operation for at least twenty-  
20 four hours. A renewable energy generation facility wind turbine is not in  
21 commercial operation unless the renewable wind energy generation facility  
22 is connected to the electrical grid or to the end user if the renewable  
23 energy generation facility is a customer-generator as defined in section  
24 70-2002;

25 (2) Nameplate capacity means the capacity of a renewable energy  
26 generation facility wind turbine to generate electricity as measured in  
27 megawatts, including fractions of a megawatt; and

28 (3) Renewable wind energy generation facility means (a) a facility  
29 that generates electricity using wind as the fuel source or (b) a  
30 facility that generates electricity using solar, biomass, or landfill gas  
31 as the fuel source if such facility was installed on or after the

1 operative date of this act and has a nameplate capacity of one hundred  
2 kilowatts or more.

3       Sec. 6. Section 77-6203, Revised Statutes Cumulative Supplement,  
4 2014, is amended to read:

5       77-6203 (1) The owner of a renewable ~~wind~~ energy generation facility  
6 annually shall pay a nameplate capacity tax equal to the total nameplate  
7 capacity of the commissioned renewable ~~wind turbine of the~~ wind energy  
8 generation facility multiplied by a tax rate of three thousand five  
9 hundred eighteen dollars per megawatt.

10       (2) No tax shall be imposed on a renewable ~~wind~~ energy generation  
11 facility:

12       (a) Owned or operated by the federal government, the State of  
13 Nebraska, a public power district, a public power and irrigation  
14 district, an individual municipality, a registered group of  
15 municipalities, an electric membership association, or a cooperative; or

16       (b) That is a customer-generator as defined in section 70-2002.

17       (3) No tax levied pursuant to this section shall be construed to  
18 constitute restricted funds as defined in section 13-518 for the first  
19 five years after the renewable ~~wind~~ energy generation facility is  
20 commissioned.

21       (4) The presence of one or more renewable ~~wind~~ energy generation  
22 facilities or supporting infrastructure shall not be a factor in the  
23 assessment, determination of actual value, or classification under  
24 section 77-201 of the real property underlying or adjacent to such  
25 facilities or infrastructure.

26       (5)(a) The Department of Revenue shall collect the tax due under  
27 this section.

28       (b) The tax shall be imposed beginning the first calendar year the  
29 renewable energy generation facility ~~wind turbine~~ is commissioned. A  
30 renewable ~~wind~~ energy generation facility that uses wind as the fuel  
31 source which was commissioned prior to July 15, 2010, shall be subject to

1 the tax levied pursuant to sections 77-6201 to 77-6204 on and after  
2 January 1, 2010. The amount of property tax on depreciable tangible  
3 personal property previously paid on a renewable wind energy generation  
4 facility that uses wind as the fuel source which was commissioned prior  
5 to July 15, 2010, which is greater than the amount that would have been  
6 paid pursuant to sections 77-6201 to 77-6204 from the date of  
7 commissioning until January 1, 2010, shall be credited against any tax  
8 due under Chapter 77, and any amount so credited that is unused in any  
9 tax year shall be carried over to subsequent tax years until fully  
10 utilized.

11 (c)(i) The tax for the first calendar year shall be prorated based  
12 upon the number of days remaining in the calendar year after the  
13 renewable energy generation facility wind turbine is commissioned.

14 (ii) In the first year in which a renewable wind energy generation  
15 facility is taxed or in any year in which additional commissioned  
16 nameplate capacity is added to a renewable wind energy generation  
17 facility, the taxes on the initial or additional nameplate capacity shall  
18 be prorated for the number of days remaining in the calendar year.

19 (iii) When a renewable energy generation facility wind turbine is  
20 decommissioned or made nonoperational by a change in law or  
21 decertification from its status as a certified renewable export facility  
22 during a tax year, the taxes shall be prorated for the number of days  
23 during which the renewable energy generation facility wind turbine was  
24 not decommissioned or was operational.

25 (iv) When the capacity of a renewable energy generation facility  
26 wind turbine to produce electricity is reduced but the renewable energy  
27 generation facility wind turbine is not decommissioned, the nameplate  
28 capacity of the renewable energy generation facility wind turbine is  
29 deemed to be unchanged.

30 (6)(a) On March 1 of each year, the owner of a renewable wind energy  
31 generation facility shall file with the Department of Revenue a report on

1 the nameplate capacity of the facility for the previous year from January  
2 1 through December 31. All taxes shall be due on April 1 and shall be  
3 delinquent if not paid on a quarterly basis on April 1 and each quarter  
4 thereafter. Delinquent quarterly payments shall draw interest at the rate  
5 provided for in section 45-104.02, as such rate may from time to time be  
6 adjusted.

7 (b) The owner of a renewable ~~wind~~ energy generation facility is  
8 liable for the taxes under this section with respect to the facility,  
9 whether or not the owner of the facility is the owner of the land on  
10 which the facility is situated.

11 (7) Failure to file a report required by subsection (6) of this  
12 section, filing such report late, failure to pay taxes due, or  
13 underpayment of such taxes shall result in a penalty of five percent of  
14 the amount due being imposed for each quarter the report is overdue or  
15 the payment is delinquent, except that the penalty shall not exceed ten  
16 thousand dollars.

17 (8) The Department of Revenue shall enforce the provisions of this  
18 section. The department shall adopt and promulgate rules and regulations  
19 necessary for the implementation and enforcement of this section.

20 (9) The Department of Revenue shall separately identify the proceeds  
21 from the tax imposed by this section and shall pay all such proceeds over  
22 to the county treasurer of the county where the renewable ~~wind~~ energy  
23 generation facility is located within thirty days after receipt of such  
24 proceeds.

25 Sec. 7. Section 77-6204, Revised Statutes Cumulative Supplement,  
26 2014, is amended to read:

27 77-6204 (1) The county treasurer shall distribute all revenue  
28 received from the Department of Revenue pursuant to section 77-6203 to  
29 local taxing entities which, but for such personal property tax  
30 exemption, would have received distribution of personal property tax  
31 revenue from depreciable personal property used directly in the

1 generation of electricity using wind, solar, biomass, or landfill gas as  
2 the fuel source.

3 (2) A local taxing entity's status as eligible for distribution  
4 under subsection (1) of this section shall not be affected when and if  
5 the net book value of personal property used directly in the generation  
6 of electricity using wind, solar, biomass, or landfill gas as the fuel  
7 source becomes zero. A local taxing entity's status as eligible for  
8 distribution under such subsection shall be affected by the disposal of  
9 all of the exempt depreciable personal property used directly in the  
10 generation of electricity using wind, solar, biomass, or landfill gas as  
11 the fuel source.

12 (3) The distribution to each eligible local taxing entity shall be  
13 calculated by determining the amount of taxes that the eligible local  
14 taxing entity levied during the taxable year and dividing this amount by  
15 the total tax levied by all of the eligible local taxing entities during  
16 the year. Each eligible entity's resulting fraction shall then be  
17 multiplied by the revenue distributed to the county treasurer by the  
18 department to determine the portion of such revenue due each local taxing  
19 entity.

20 (4) The Department of Revenue shall not retain any revenue collected  
21 pursuant to sections 77-6201 to 77-6204 for distribution, use, transfer,  
22 pledge, or allocation to or from the General Fund.

23 Sec. 8. This act becomes operative on January 1, 2016.

24 Sec. 9. Original section 13-518, Reissue Revised Statutes of  
25 Nebraska, and sections 77-105, 77-202, 77-6201, 77-6202, 77-6203, and  
26 77-6204, Revised Statutes Cumulative Supplement, 2014, are repealed.