

LEGISLATURE OF NEBRASKA
ONE HUNDRED FOURTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 538

Introduced by Legislative Performance Audit Committee: Hadley, 37; Krist, 10; Mello, 5; Watermeier, 1.

Read first time January 21, 2015

Committee: Revenue

1 A BILL FOR AN ACT relating to revenue and taxation; to amend sections
2 50-1206 and 50-1212, Reissue Revised Statutes of Nebraska, and
3 sections 50-1203, 50-1204, 50-1208, 50-1209, 50-1210, 50-1211,
4 77-5725, and 77-5806, Revised Statutes Cumulative Supplement, 2014;
5 to require audits of tax incentive programs under the Legislative
6 Performance Audit Act; to change sunset dates for certain tax
7 incentive programs; to harmonize provisions; to provide an operative
8 date; and to repeal the original sections.
9 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 50-1203, Revised Statutes Cumulative Supplement,
2 2014, is amended to read:

3 50-1203 For purposes of the Legislative Performance Audit Act:

4 (1) Agency means any department, board, commission, or other
5 governmental unit of the State of Nebraska acting or purporting to act by
6 reason of connection with the State of Nebraska but does not include (a)
7 any court, (b) the Governor or his or her personal staff, (c) any
8 political subdivision or entity thereof, or (d) any entity of the federal
9 government;

10 (2) Auditor of Public Accounts means the Auditor of Public Accounts
11 whose powers and duties are prescribed in section 84-304;

12 (3) Business day means a day on which state offices are open for
13 regular business;

14 (4) Committee means the Legislative Performance Audit Committee;

15 (5) Committee report means the report released by the committee at
16 the conclusion of a performance audit;

17 (6) Legislative Auditor means the Legislative Auditor appointed by
18 the Executive Board of the Legislative Council under section 50-401.01;

19 (7) Majority vote means a vote by the majority of the committee's
20 members;

21 (8) Office means the office of Legislative Audit;

22 (9) Performance audit means an objective and systematic examination
23 of evidence for the purpose of providing an independent assessment of the
24 performance of a government organization, program, activity, or function
25 in order to provide information to improve public accountability and
26 facilitate decisionmaking by parties with responsibility to oversee or
27 initiate corrective action. Performance audits may have a variety of
28 objectives, including the assessment of a program's effectiveness and
29 results, economy and efficiency, internal control, and compliance with
30 legal or other requirements;

31 (10) Preaudit inquiry means an investigatory process during which

1 the office gathers and examines evidence to determine if a performance
2 audit topic has merit;~~and~~

3 (11) Tax incentive performance audit means an evaluation of a tax
4 incentive program pursuant to section 50-1209; and

5 (12 ~~11~~) Working papers means those documents containing evidence to
6 support the office's findings, opinions, conclusions, and judgments and
7 includes the collection of evidence prepared or obtained by the office
8 during the performance audit or preaudit inquiry.

9 Sec. 2. Section 50-1204, Revised Statutes Cumulative Supplement,
10 2014, is amended to read:

11 50-1204 (1) The Legislative Performance Audit Committee is hereby
12 established as a special legislative committee to exercise the authority
13 and perform the duties provided for in the Legislative Performance Audit
14 Act. The committee shall be composed of the Speaker of the Legislature,
15 the chairperson of the Executive Board of the Legislative Council, the
16 chairperson of the Appropriations Committee of the Legislature, and four
17 other members of the Legislature to be chosen by the Executive Board of
18 the Legislative Council. The executive board shall ensure that the
19 Legislative Performance Audit Committee includes adequate geographic
20 representation. The chairperson and vice-chairperson of the Legislative
21 Performance Audit Committee shall be elected by majority vote. For
22 purposes of tax incentive performance audits authorized in section
23 50-1209, the committee shall include as nonvoting members the chairperson
24 of the Revenue Committee of the Legislature or his or her designee and
25 one other member of the Revenue Committee, as selected by the Revenue
26 Committee. The Legislative Performance Audit Committee ~~committee~~ shall be
27 subject to all rules prescribed by the Legislature. The committee shall
28 be reconstituted at the beginning of each Legislature and shall meet as
29 needed.

30 (2) The Legislative Auditor shall ensure that performance audit work
31 conducted by the office conforms with performance audit standards

1 contained in the Government Auditing Standards (2011 Revision) as
2 required in section 50-1205.01. The office shall be composed of the
3 Legislative Auditor and other employees of the Legislature employed to
4 conduct performance audits. The office shall be the custodian of all
5 records generated by the committee or office except as provided by
6 section 50-1213, subsection (11) of section 77-2711, or subdivision (10)
7 (a) of section 77-27,119. The office shall inform the Legislative Fiscal
8 Analyst of its activities and consult with him or her as needed. The
9 office shall operate under the general direction of the committee.

10 Sec. 3. Section 50-1206, Reissue Revised Statutes of Nebraska, is
11 amended to read:

12 50-1206 (1) Requests for performance audits may be made by the
13 Governor, any other constitutional officer of the State of Nebraska, a
14 legislator, the Legislative Auditor, the Legislative Fiscal Analyst, or
15 the Director of Research of the Legislature.

16 (2) Performance audit requests shall be submitted to the committee
17 chairperson or Legislative Auditor by letter or on a form developed by
18 the Legislative Auditor.

19 (3) When considering a performance audit request, if the committee
20 determines that the request has potential merit but insufficient
21 information is available, it may, by majority vote, instruct the
22 Legislative Auditor to conduct a preaudit inquiry.

23 (4) Upon completion of the preaudit inquiry, the committee
24 chairperson shall place the request on the agenda for the committee's
25 next meeting and shall notify the request sponsor of that action.

26 (5) Tax incentive performance audits shall be initiated as provided
27 in section 50-1209.

28 Sec. 4. Section 50-1208, Revised Statutes Cumulative Supplement,
29 2014, is amended to read:

30 50-1208 (1) The committee shall, by majority vote, adopt requests
31 for performance audit. The committee chairperson shall notify each

1 requester of any action taken on his or her request.

2 (2) Before the office begins a performance audit, it shall notify in
3 writing the agency director, the program director, when relevant, and the
4 Governor that a performance audit will be conducted.

5 (3) Following notification, the office shall arrange an entrance
6 conference to provide the agency with further information about the audit
7 process. The agency director shall inform the agency staff, in writing,
8 of the performance audit and shall instruct agency staff to cooperate
9 fully with the office.

10 (4) After the entrance conference, the office shall conduct the
11 research necessary to draft a scope statement for consideration by the
12 committee. The scope statement shall identify the specific issues to be
13 addressed in the audit. The committee shall, by majority vote, adopt,
14 reject, or amend and adopt the scope statement prepared by the office.

15 (5) Once the committee has adopted a scope statement, the office
16 shall develop an audit plan. The audit plan shall include a description
17 of the research and audit methodologies to be employed and a projected
18 deadline for completion of the office's report. The audit plan shall be
19 submitted to the committee, and a majority vote shall be required for its
20 approval. Upon approval of the audit plan, the agency shall be notified
21 in writing of the specific scope of the audit and the projected deadline
22 for completion of the office's report. If the office needs information
23 from a political subdivision or entity thereof to effectively conduct a
24 performance audit of an agency, the political subdivision or entity
25 thereof shall provide information, on request, to the office.

26 (6) If the performance audit reveals a need to modify the scope
27 statement or audit plan, the Legislative Auditor may request that the
28 committee make revisions. A majority vote shall be required to revise the
29 scope statement or audit plan. The agency shall be notified in writing of
30 any revision to the scope statement or audit plan.

31 Sec. 5. Section 50-1209, Revised Statutes Cumulative Supplement,

1 2014, is amended to read:

2 50-1209 (1) Tax incentive performance audits shall be conducted by
3 the office pursuant to this section on the following tax incentive
4 programs:

5 (a) The Angel Investment Tax Credit Act;

6 (b) The Beginning Farmer Tax Credit Act;

7 (c) The Nebraska Advantage Act;

8 (d) The Nebraska Advantage Microenterprise Tax Credit Act;

9 (e) The Nebraska Advantage Research and Development Act;

10 (f) The Nebraska Advantage Rural Development Act;

11 (g) The Nebraska Job Creation and Mainstreet Revitalization Act;

12 (h) The New Markets Job Growth Investment Act; and

13 (i) Any other tax incentive program created by the Legislature for
14 the purpose of recruitment or retention of businesses in Nebraska. In
15 determining whether a future tax incentive program is enacted for the
16 purpose of recruitment or retention of businesses, the office shall
17 consider legislative intent, including legislative statements of purpose
18 and goals, and may also consider whether the tax incentive program is
19 promoted as a business incentive by the Department of Economic
20 Development or other relevant state agency.

21 (2) The office shall develop a schedule for conducting tax incentive
22 performance audits and shall update the schedule annually. The schedule
23 shall ensure that each tax incentive program is reviewed at least once
24 every three years.

25 (3) Each tax incentive performance audit conducted by the office
26 pursuant to this section shall include the following:

27 (a) An analysis of whether the tax incentive program is meeting the
28 following goals:

29 (i) Strengthening the state's economy overall by attracting new
30 business to the state, expanding existing businesses, increasing
31 employment, creating high-quality jobs, and increasing business

1 investment;

2 (ii) Revitalizing rural and other distressed areas of the state;

3 (iii) Diversifying the state's economy and positioning Nebraska for

4 the future by stimulating entrepreneurial, high-tech, and renewable

5 energy firms; and

6 (iv) Any other program-specific goals found in the statutes for the

7 tax incentive program being evaluated;

8 (b) An analysis of the economic and fiscal impacts of the tax

9 incentive program. The analysis may take into account the following

10 considerations in addition to other relevant factors:

11 (i) The extent to which the tax incentive changes business behavior;

12 (ii) The results of the tax incentive for the economy of Nebraska as

13 a whole. This consideration includes both positive direct and indirect

14 impacts and any negative effects on other Nebraska businesses; and

15 (iii) A comparison to the results of other economic development

16 strategies with similar goals, other policies, or other incentives;

17 (c) An assessment of whether adequate protections are in place to

18 ensure the fiscal impact of the tax incentive does not increase

19 substantially beyond the state's expectations in future years;

20 (d) An assessment of the fiscal impact of the tax incentive on the

21 budgets of local governments, if applicable; and

22 (e) Recommendations for any changes to statutes or rules and

23 regulations that would allow the tax incentive program to be more easily

24 evaluated in the future, including changes to data collection, reporting,

25 sharing of information, and clarification of goals.

26 ~~Upon approval of an audit plan pursuant to section 50-1208, the~~

27 ~~agency shall be notified in writing of the specific scope of the audit~~

28 ~~and the projected deadline for completion of the office's report. If the~~

29 ~~office needs information from a political subdivision or entity thereof~~

30 ~~to effectively conduct a performance audit of an agency, the political~~

31 ~~subdivision or entity thereof shall provide information, on request, to~~

1 ~~the office.~~

2 Sec. 6. Section 50-1210, Revised Statutes Cumulative Supplement,
3 2014, is amended to read:

4 50-1210 (1) Upon completion of a performance audit, the office shall
5 prepare a report of its findings and recommendations for action. The
6 Legislative Auditor shall provide the office's report concurrently to the
7 committee, agency director, and Legislative Fiscal Analyst. ~~The report~~
8 ~~submitted to the committee and the Legislative Fiscal Analyst shall be~~
9 ~~submitted electronically.~~ The committee may, by majority vote, release
10 the office's report or portions thereof to other individuals, with the
11 stipulation that the released material shall be kept confidential.

12 (2) When the Legislative Auditor provides the report to the
13 Legislative Fiscal Analyst, the Legislative Fiscal Analyst shall issue an
14 opinion to the committee indicating whether the office's recommendations
15 can be implemented by the agency within its current appropriation.

16 (3) When the Legislative Auditor provides the report to the agency,
17 the agency shall have twenty business days from the date of receipt of
18 the report to provide a written response. Any written response received
19 from the agency shall be attached to the committee report. The agency
20 shall not release any part of the report to any person outside the
21 agency, except that an agency may discuss the report with the Governor.
22 The Governor shall not release any part of the report.

23 (4) Following receipt of any written response from the agency, the
24 Legislative Auditor shall prepare a brief written summary of the
25 response, including a description of any significant disagreements the
26 agency has with the office's report or recommendations.

27 Sec. 7. Section 50-1211, Revised Statutes Cumulative Supplement,
28 2014, is amended to read:

29 50-1211 (1) The committee shall review the office's report, the
30 agency's response, the Legislative Auditor's summary of the agency's
31 response, and the Legislative Fiscal Analyst's opinion prescribed in

1 section 50-1210. The committee may amend and shall adopt or reject each
2 recommendation in the report and indicate whether each recommendation can
3 be implemented by the agency within its current appropriation. The
4 adopted recommendations shall be incorporated into a committee report,
5 which shall be approved by majority vote.

6 (2) The committee report shall include, but not be limited to, the
7 office's report, the agency's written response to the report, the
8 Legislative Auditor's summary of the agency response, the committee's
9 recommendations, and any opinions of the Legislative Fiscal Analyst
10 regarding whether the committee's recommendations can be implemented by
11 the agency within its current appropriation.

12 (3) The committee may decide, by majority vote, to defer adoption of
13 a committee report pending a public hearing. If the committee elects to
14 schedule a public hearing, it shall release, for review by interested
15 persons prior to the hearing, the office's report, the agency's response,
16 the Legislative Auditor's summary of the agency's response, and any
17 opinions of the Legislative Fiscal Analyst. The public hearing shall be
18 held not less than ten nor more than twenty business days following
19 release of the materials.

20 (4) When the committee elects to schedule a hearing, a summary of
21 the testimony received at the hearing shall be attached to the committee
22 report as an addendum. A transcript of the testimony received at the
23 hearing shall be on file with the committee and available for public
24 inspection. Unless the committee votes to delay release of the committee
25 report, the report shall be released within forty business days after the
26 public hearing.

27 (5) Once the committee has approved its report, the committee shall,
28 by majority vote, cause the committee report to be released to all
29 members of the Legislature and to the public. The report submitted to the
30 members of the Legislature shall be submitted electronically. The
31 committee may, by majority vote, release the committee report or portions

1 thereof prior to public release of the report. Each tax incentive
2 performance audit report shall also be presented at a joint hearing of
3 the Appropriations Committee and Revenue Committee of the Legislature.

4 Sec. 8. Section 50-1212, Reissue Revised Statutes of Nebraska, is
5 amended to read:

6 50-1212 (1) Within forty business days following the release of the
7 committee report, the agency shall provide to the committee a written
8 implementation plan describing the action planned and timeframe for
9 accomplishment of each of the recommendations contained in the committee
10 report, except that the committee may waive such requirement for tax
11 incentive performance audits.

12 (2) The agency director shall make every effort to fully implement
13 the recommendations that can be implemented within the limits of the
14 agency's current appropriation. For those recommendations which require
15 additional appropriations or the drafting of legislation, the committee
16 shall sponsor the legislation or present the proposal for additional or
17 revised appropriations to the Appropriations Committee of the
18 Legislature.

19 (3 2) The Legislative Performance Audit Committee shall establish a
20 system to ascertain and monitor agency conformity to the recommendations
21 contained in the committee report and compliance with any statutory
22 changes resulting from the report recommendations.

23 Sec. 9. Section 77-5725, Revised Statutes Cumulative Supplement,
24 2014, is amended to read:

25 77-5725 (1) Applicants may qualify for benefits under the Nebraska
26 Advantage Act in one of six tiers:

27 (a) Tier 1, investment in qualified property of at least one million
28 dollars and the hiring of at least ten new employees. There shall be no
29 new project applications for benefits under this tier filed after
30 December 31, 2019 ~~2017~~. All complete project applications filed on or
31 before December 31, 2019 ~~2017~~, shall be considered by the Tax

1 Commissioner and approved if the project and taxpayer qualify for
2 benefits. Agreements may be executed with regard to completed project
3 applications filed on or before December 31, 2019 ~~2017~~. All project
4 agreements pending, approved, or entered into before such date shall
5 continue in full force and effect;

6 (b) Tier 2, (i) investment in qualified property of at least three
7 million dollars and the hiring of at least thirty new employees or (ii)
8 for a large data center project, investment in qualified property for the
9 data center of at least two hundred million dollars and the hiring for
10 the data center of at least thirty new employees;

11 (c) Tier 3, the hiring of at least thirty new employees. There shall
12 be no new project applications for benefits under this tier filed after
13 December 31, 2019 ~~2017~~. All complete project applications filed on or
14 before December 31, 2019 ~~2017~~, shall be considered by the Tax
15 Commissioner and approved if the project and taxpayer qualify for
16 benefits. Agreements may be executed with regard to completed project
17 applications filed on or before December 31, 2019 ~~2017~~. All project
18 agreements pending, approved, or entered into before such date shall
19 continue in full force and effect;

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

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

30 (f) Tier 6, investment in qualified property of at least ten million
31 dollars and the hiring of at least seventy-five new employees or the

1 investment in qualified property of at least one hundred million dollars
2 and the hiring of at least fifty new employees. Agreements may be
3 executed with regard to completed project applications filed before
4 January 1, ~~2020~~ 2018. All project agreements pending, approved, or
5 entered into before such date shall continue in full force and effect.

6 (2) When the taxpayer has met the required levels of employment and
7 investment contained in the agreement for a tier 1, tier 2, tier 4, tier
8 5, or tier 6 project, the taxpayer shall be entitled to the following
9 incentives:

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

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

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

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

28 (iv) Tangible personal property by a contractor or repairperson
29 after appointment as a purchasing agent of the taxpayer when such
30 property is annexed to, but not incorporated into, real estate as a part
31 of a project. The refund shall be based on the cost of materials subject

1 to the sales and use tax that were annexed to real estate; and

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

9 (b) A refund of all sales and use taxes for a tier 2, tier 4, tier
10 5, or tier 6 project or a refund of one-half of all sales and use taxes
11 for a tier 1 project paid under the Local Option Revenue Act, the
12 Nebraska Revenue Act of 1967, and sections 13-319, 13-324, and 13-2813 on
13 the types of purchases, including rentals, listed in subdivision (a) of
14 this subsection for such taxes paid during each year of the entitlement
15 period in which the taxpayer is at or above the required levels of
16 employment and investment.

17 (3) Any taxpayer who qualifies for a tier 1, tier 2, tier 3, or tier
18 4 project shall be entitled to a credit equal to three percent times the
19 average wage of new employees times the number of new employees if the
20 average wage of the new employees equals at least sixty percent of the
21 Nebraska average annual wage for the year of application. The credit
22 shall equal four percent times the average wage of new employees times
23 the number of new employees if the average wage of the new employees
24 equals at least seventy-five percent of the Nebraska average annual wage
25 for the year of application. The credit shall equal five percent times
26 the average wage of new employees times the number of new employees if
27 the average wage of the new employees equals at least one hundred percent
28 of the Nebraska average annual wage for the year of application. The
29 credit shall equal six percent times the average wage of new employees
30 times the number of new employees if the average wage of the new
31 employees equals at least one hundred twenty-five percent of the Nebraska

1 average annual wage for the year of application. For computation of such
2 credit:

3 (a) Average annual wage means the total compensation paid to
4 employees during the year at the project who are not base-year employees
5 and who are paid wages equal to at least sixty percent of the Nebraska
6 average weekly wage for the year of application, excluding any
7 compensation in excess of one million dollars paid to any one employee
8 during the year, divided by the number of equivalent employees making up
9 such total compensation;

10 (b) Average wage of new employees means the average annual wage paid
11 to employees during the year at the project who are not base-year
12 employees and who are paid wages equal to at least sixty percent of the
13 Nebraska average weekly wage for the year of application, excluding any
14 compensation in excess of one million dollars paid to any one employee
15 during the year; and

16 (c) Nebraska average annual wage means the Nebraska average weekly
17 wage times fifty-two.

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

23 (5) Any taxpayer who has met the required levels of employment and
24 investment for a tier 2 or tier 4 project shall receive a credit equal to
25 ten percent of the investment made in qualified property at the project.
26 Any taxpayer who has met the required levels of investment and employment
27 for a tier 1 project shall receive a credit equal to three percent of the
28 investment made in qualified property at the project. Any taxpayer who
29 has met the required levels of investment and employment for a tier 6
30 project shall receive a credit equal to fifteen percent of the investment
31 made in qualified property at the project.

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

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

10 (8)(a) Property described in subdivisions (8)(c)(i) through (v) of
11 this section used in connection with a project or projects and acquired
12 by the taxpayer, whether by lease or purchase, after the date the
13 application was filed, shall constitute separate classes of property and
14 are eligible for exemption under the conditions and for the time periods
15 provided in subdivision (8)(b) of this section.

16 (b)(i) A taxpayer who has met the required levels of employment and
17 investment for a tier 4 project shall receive the exemption of property
18 in subdivisions (8)(c)(ii), (iii), and (iv) of this section. A taxpayer
19 who has met the required levels of employment and investment for a tier 6
20 project shall receive the exemption of property in subdivisions (8)(c)
21 (ii), (iii), (iv), and (v) of this section. Such property shall be
22 eligible for the exemption from the first January 1 following the end of
23 the year during which the required levels were exceeded through the ninth
24 December 31 after the first year property included in subdivisions (8)(c)
25 (ii), (iii), (iv), and (v) of this section qualifies for the exemption.

26 (ii) A taxpayer who has filed an application that describes a tier 2
27 large data center project or a project under tier 4 or tier 6 shall
28 receive the exemption of property in subdivision (8)(c)(i) of this
29 section beginning with the first January 1 following the acquisition of
30 the property. The exemption shall continue through the end of the period
31 property included in subdivisions (8)(c)(ii), (iii), (iv), and (v) of

1 this section qualifies for the exemption.

2 (iii) A taxpayer who has filed an application that describes a tier
3 2 large data center project or a tier 5 project that is sequential to a
4 tier 2 large data center project for which the entitlement period has
5 expired shall receive the exemption of all property in subdivision (8)(c)
6 of this section beginning any January 1 after the acquisition of the
7 property. Such property shall be eligible for exemption from the tax on
8 personal property from the January 1 preceding the first claim for
9 exemption approved under this subdivision through the ninth December 31
10 after the year the first claim for exemption is approved.

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

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

25 (c) The following property used in connection with such project or
26 projects and acquired by the taxpayer, whether by lease or purchase,
27 after the date the application was filed shall constitute separate
28 classes of personal property:

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

1 (ii) Computer systems, made up of equipment that is interconnected
2 in order to enable the acquisition, storage, manipulation, management,
3 movement, control, display, transmission, or reception of data involving
4 computer software and hardware, used for business information processing
5 which require environmental controls of temperature and power and which
6 are capable of simultaneously supporting more than one transaction and
7 more than one user. A computer system includes peripheral components
8 which require environmental controls of temperature and power connected
9 to such computer systems. Peripheral components shall be limited to
10 additional memory units, tape drives, disk drives, power supplies,
11 cooling units, data switches, and communication controllers;

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

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

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

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

1 such to the taxpayer and to the affected county assessor.

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

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

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

23 (d) For a tier 2 large data center project, beginning October 1,
24 2012, and each October 1 thereafter, the average Producer Price Index for
25 all commodities, published by the United States Department of Labor,
26 Bureau of Labor Statistics, for the most recent twelve available periods
27 shall be divided by the Producer Price Index for the first quarter of
28 2012 and the result multiplied by the applicable investment threshold.
29 The investment thresholds shall be adjusted for cumulative inflation
30 since 2012.

31 (e) If the resulting amount is not a multiple of one million

1 dollars, the amount shall be rounded to the next lowest one million
2 dollars.

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

7 Sec. 10. Section 77-5806, Revised Statutes Cumulative Supplement,
8 2014, is amended to read:

9 77-5806 The Nebraska Advantage Research and Development Act shall be
10 operative for all tax years beginning or deemed to begin on or after
11 January 1, 2006, under the Internal Revenue Code of 1986, as amended. No
12 business firm shall be allowed to first claim the credit for any tax year
13 beginning or deemed to begin after December 31, 2019 ~~2017~~, under the
14 Internal Revenue Code of 1986, as amended.

15 Sec. 11. This act becomes operative on January 1, 2016.

16 Sec. 12. Original sections 50-1206 and 50-1212, Reissue Revised
17 Statutes of Nebraska, and sections 50-1203, 50-1204, 50-1208, 50-1209,
18 50-1210, 50-1211, 77-5725, and 77-5806, Revised Statutes Cumulative
19 Supplement, 2014, are repealed.