

ONE HUNDRED SECOND LEGISLATURE - SECOND SESSION - 2012
COMMITTEE STATEMENT
LB1118

Hearing Date: Thursday February 02, 2012
Committee On: Revenue
Introducer: Cornett
One Liner: Provide tax incentives for large data center projects

Roll Call Vote - Final Committee Action:
Advanced to General File

Vote Results:

Aye:	7	Senators Adams, Brasch, Cornett, Fischer, Hadley, Pirsch, Schumacher
Nay:		
Absent:	1	Senator Louden
Present Not Voting:		

Proponents:

Sen. Abbie Cornett
Gary Hamer
Ron Sedlacek

Representing:

Introducer
Dept. of Economic Development
NE Chamber of Commerce

Opponents:

Representing:

Neutral:

Representing:

Summary of purpose and/or changes:

LB 1118 would amend the Nebraska Advantage Act to provide tax incentives for certain large data centers.

Section 1: Provides that section 3 of LB 1118 is part of the Nebraska Advantage Act. [LB 1118, sec. 1, amending Neb. Rev. Stat. sec. 77-5701.]

Section 2: Provides that the definition of "data center" set forth in section 3 of LB 1118 is part of the Nebraska Advantage Act. [LB 1118, sec. 1, amending Neb. Rev. Stat. sec. 77-5703.]

Section 3: Defines "data center" to mean "Computers, supporting equipment, and other organized assembly of hardware or software that are designed to centralize the storage, management, or dissemination of data and information, environmentally controlled structures or facilities or interrelated structures or facilities that provide the infrastructure for housing the equipment, such as raised flooring, electricity supply, communication and data lines, Internet access, cooling, security, and fire suppression, and any building housing the foregoing. A data center also includes a facility described in this section for the co-location of computers." [LB 1118, sec. 3.]

Section 4: Would remove the definition of "data center" set forth in Neb. Rev. Stat. sec. 77-5715(1)(i) because section 3 of LB 1118 provides a new definition of "data center". [LB 1118, sec. 4, amending Neb. Rev. Stat. sec. 77-5715(1)(i).]

Section 5: Would bifurcate Tier 2 of the Nebraska Advantage Act so that it provides for two levels of investment and employment, the second of which is tailored for a large data center project:

At least \$3 million in qualified investment and hire at least 30 new employees (the same as under current law for a Tier 2 project); and

For a large data center project, investment in qualified property for the data center of at least \$300 million and hiring at least 30 new employees for the data center (the proposed new provision).

Section 5 of LB 1118 also allows a tangible personal property tax exemption:

- (1) For a Tier 2 large data center project, and for a Tier 4 and Tier 6 project, for turbine-powered aircraft beginning with the first January 1 following the acquisition of the property;
- (2) For a Tier 2 large data center project or a Tier 5 project that was included as part of a Tier 2 large data center project for which the entitlement period has expired (the exemption would apply to all property listed in Neb. Rev. Stat. sec. 77-5725(8)(c)); and
- (3) For a Tier 2 large data center project for any other property located at the project.

Section 5 of LB 1118 also allows a tangible personal property tax exemption for certain computer systems for a taxpayer who has a project for an Internet web portal or a data center and who has met the required levels of investment and employment for a Tier 2 project or the required level of investment for a Tier 5 project, "taking into account only the employment and investment at the web portal or data center project".

Section 5 sets forth rules governing the time when such tangible personal property tax exemptions begin (e.g., beginning with the first January 1 following the acquisition of the property) and the time length of the tangible personal property tax exemption (e.g., from the January 1 preceding the first claim for exemption approved under Neb. Rev. Stat. sec. 77-5725(8) through the ninth December 31 after the year the first claim for exemption is approved).

Section 5 of LB 1118 also allows a tangible personal property tax exemption for a Tier 4 project, for: certain computer systems; depreciable personal property used for a distribution facility, including, but not limited to storage racks; and personal property which is business equipment located in a single project if the business equipment is involved directly in the manufacture or processing of agricultural products.

Section 5 of LB 1118 also allows a tangible personal property tax exemption for a Tier 6 project, for: certain computer systems; depreciable personal property used for a distribution facility; personal property which is business equipment located in a single project if the business equipment is involved directly in the manufacture or processing of agricultural products; and any other property located at the project.

Section 5 of LB 1118 also requires the Tax Commissioner to determine whether a taxpayer is eligible to obtain exemption for personal property based on the criteria for exemption. And the eligibility of each item listed for exemption and to certify such determinations to the taxpayer and the county assessor on or before August 1 each year. Section also strikes current language in Neb. Rev. Stat. sec. 77-5725(8)(d) which limits governs the Tax Commissioner's determination whether items of personal property are eligible for exemption under the Nebraska Advantage Act.

Finally, section 5 of LB 1118 sets forth a mathematical formula for indexing for inflation (using the average Producer Price Index for all commodities) the level of investment for a Tier 2 large data center project

[LB 1118, sec. 5, amending Neb. Rev. Stat. sec. 77-5725(1)(b) and (8).]

Section 6: Would allow wage withholding credits under the Nebraska Advantage Act to be used to obtain a refund of state and local sales and use taxes (including "county" and "municipal county" sales and use taxes) for a Tier 2 large data center project. Section 6 would also provide that when the required levels of investment and employment for a Tier 2 large data center project have been met, the credits earned for a Tier 2 large data center project may be used to obtain a payment from the State of Nebraska equal to the real property taxes due after the year of application and

before the end of the carryover period, for real property that is included in such project and acquired by the taxpayer, whether by lease or purchase, after the date the application was filed. [LB 1118, sec. 6, amending Neb. Rev. Stat. sec. 77-5726(1)(c) and (d).]

Section 7: Would provide that, for a Tier 2 large data center project, any personal property tax that would have been due except for the exemption under the Nebraska Advantage Act, together with interest at the rate of 14 percent from the original delinquency date of tax that would have been due until the date paid, to the extent it becomes due under Neb. Rev. Stat. sec. 77-5727, must be considered delinquent and must be immediately payable to the county or counties in which the property was located when exempted. [LB 1118, sec. 7, amending Neb. Rev. Stat. sec. 77-5727 by amending subsection (6).]

Section 8: Would add a new subsection (4) to Neb. Rev. Stat. sec. 77-5735 which provides that changes made to the Nebraska Advantage Act by LB 1118 "apply to all applications filed on or after the effective date of this act", which would be the date the bill becomes law pursuant to the emergency clause set forth in section 10 of LB 1118. [LB 1118, sec. 8, amending Neb. Rev. Stat. sec. 77-5735 by adding new subsection (4).]

Section 9: Would repeal the current version of the statutes that LB 1118 seeks to amend. [LB 1118, sec. 9.]

Section 10: Sets forth the emergency clause. [LB 1118, sec. 10.]

Abbie Cornett, Chairperson