

LEGISLATURE OF NEBRASKA  
ONE HUNDRED THIRD LEGISLATURE  
SECOND SESSION

**LEGISLATIVE BILL 1067**

Introduced by Hadley, 37.

Read first time January 22, 2014

Committee: Revenue

A BILL

1 FOR AN ACT relating to revenue and taxation; to amend sections  
2 77-5806 and 77-5905, Reissue Revised Statutes of  
3 Nebraska, and section 77-5725, Revised Statutes  
4 Supplement, 2013; to extend sunset dates for tax  
5 incentives under the Nebraska Advantage Act, the Nebraska  
6 Advantage Research and Development Act, and the Nebraska  
7 Advantage Microenterprise Tax Credit Act; and to repeal  
8 the original sections.  
9 Be it enacted by the people of the State of Nebraska,

1                   Section 1. Section 77-5725, Revised Statutes Supplement,  
2   2013, is amended to read:

3                   77-5725 (1) Applicants may qualify for benefits under the  
4   Nebraska Advantage Act in one of six 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.~~2017. All complete project  
9   applications filed on or before December 31, ~~2015,~~2017, shall be  
10   considered by the Tax Commissioner and approved if the project and  
11   taxpayer qualify for benefits. Agreements may be executed with regard  
12   to completed project applications filed on or before December 31,  
13   ~~2015.~~2017. All project agreements pending, approved, or entered into  
14   before such date shall continue in full force and effect;

15                  (b) Tier 2, (i) investment in qualified property of at  
16   least three million dollars and the hiring of at least thirty new  
17   employees or (ii) for a large data center project, investment in  
18   qualified property for the data center of at least two hundred  
19   million dollars and the hiring for the data center of at least thirty  
20   new employees;

21                  (c) Tier 3, the hiring of at least thirty new employees.  
22   There shall be no new project applications for benefits under this  
23   tier filed after December 31, ~~2015.~~2017. All complete project  
24   applications filed on or before December 31, ~~2015,~~2017, shall be  
25   considered by the Tax Commissioner and approved if the project and

1 taxpayer qualify for benefits. Agreements may be executed with regard  
2 to completed project applications filed on or before December 31,  
3 ~~2015-2017~~. All project agreements pending, approved, or entered into  
4 before such date shall continue in full force and effect;

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

8 (e) Tier 5, (i) investment in qualified property of at  
9 least thirty million dollars or (ii) for the production of  
10 electricity by using one or more sources of renewable energy to  
11 produce electricity for sale as described in subdivision (1)(j) of  
12 section 77-5715, investment in qualified property of at least twenty  
13 million dollars. Failure to maintain an average number of equivalent  
14 employees as defined in section 77-5727 greater than or equal to the  
15 number of equivalent employees in the base year shall result in a  
16 partial recapture of benefits; and

17 (f) Tier 6, investment in qualified property of at least  
18 ten million dollars and the hiring of at least seventy-five new  
19 employees or the investment in qualified property of at least one  
20 hundred million dollars and the hiring of at least fifty new  
21 employees. Agreements may be executed with regard to completed  
22 project applications filed before January 1, ~~2016-2018~~. All project  
23 agreements pending, approved, or entered into before such date shall  
24 continue in full force and effect.

25 (2) When the taxpayer has met the required levels of

1 employment and investment contained in the agreement for a tier 1,  
2 tier 2, tier 4, tier 5, or tier 6 project, the taxpayer shall be  
3 entitled to the following incentives:

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

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

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

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

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

1 of materials subject to the sales and use tax that were annexed to  
2 real estate; and

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

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

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

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

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

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

24 (c) Nebraska average annual wage means the Nebraska  
25 average weekly wage times fifty-two.

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

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

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

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

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

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

20           (ii) A taxpayer who has filed an application that  
21 describes a tier 2 large data center project or a project under tier  
22 4 or tier 6 shall receive the exemption of property in subdivision  
23 (8)(c)(i) of this section beginning with the first January 1  
24 following the acquisition of the property. The exemption shall  
25 continue through the end of the period property included in



1 subdivisions (8)(c)(ii), (iii), (iv), and (v) of this section  
2 qualifies for the exemption.

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

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

24 (v) Such investment and hiring of new employees shall be  
25 considered a required level of investment and employment for this

1 subsection and for the recapture of benefits under this subsection  
2 only.

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

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

11 (ii) Computer systems, made up of equipment that is  
12 interconnected in order to enable the acquisition, storage,  
13 manipulation, management, movement, control, display, transmission,  
14 or reception of data involving computer software and hardware, used  
15 for business information processing which require environmental  
16 controls of temperature and power and which are capable of  
17 simultaneously supporting more than one transaction and more than one  
18 user. A computer system includes peripheral components which require  
19 environmental controls of temperature and power connected to such  
20 computer systems. Peripheral components shall be limited to  
21 additional memory units, tape drives, disk drives, power supplies,  
22 cooling units, data switches, and communication controllers;

23 (iii) Depreciable personal property used for a  
24 distribution facility, including, but not limited to, storage racks,  
25 conveyor mechanisms, forklifts, and other property used to store or

1 move products;

2 (iv) Personal property which is business equipment  
3 located in a single project if the business equipment is involved  
4 directly in the manufacture or processing of agricultural products;  
5 and

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

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

22 (9)(a) The investment thresholds in this section for a  
23 particular year of application shall be adjusted by the method  
24 provided in this subsection, except that the investment threshold for  
25 a tier 5 project described in subdivision (1)(e)(ii) of this section

1 shall not be adjusted.

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

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

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

1 adjusted for cumulative inflation since 2012.

2 (e) If the resulting amount is not a multiple of one  
3 million dollars, the amount shall be rounded to the next lowest one  
4 million dollars.

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

10 Sec. 2. Section 77-5806, Reissue Revised Statutes of  
11 Nebraska, is amended to read:

12 77-5806 The Nebraska Advantage Research and Development  
13 Act shall be operative for all tax years beginning or deemed to begin  
14 on or after January 1, 2006, under the Internal Revenue Code of 1986,  
15 as amended. No business firm shall be allowed to first claim the  
16 credit for any tax year beginning or deemed to begin after December  
17 31, ~~2015, 2017,~~ under the Internal Revenue Code of 1986, as amended.

18 Sec. 3. Section 77-5905, Reissue Revised Statutes of  
19 Nebraska, is amended to read:

20 77-5905 (1) If the Department of Revenue determines that  
21 an application meets the requirements of section 77-5904 and that the  
22 investment or employment is eligible for the credit and (a) the  
23 applicant is actively engaged in the operation of the microbusiness  
24 or will be actively engaged in the operation upon its establishment,  
25 (b) the majority of the assets of the microbusiness are located in a

1 distressed area or will be upon its establishment, (c) the applicant  
2 will make new investment or employment in the microbusiness, and (d)  
3 the new investment or employment will create new income or jobs in  
4 the distressed area, the department shall approve the application and  
5 authorize tentative tax credits to the applicant within the limits  
6 set forth in this section and certify the amount of tentative tax  
7 credits approved for the applicant. Applications for tax credits  
8 shall be considered in the order in which they are received.

9           (2) The department may approve applications up to the  
10 adjusted limit for each calendar year beginning January 1, 2006,  
11 through December 31, ~~2015.~~2017. After applications totaling the  
12 adjusted limit have been approved for a calendar year, no further  
13 applications shall be approved for that year. The adjusted limit in a  
14 given year is two million dollars plus tentative tax credits that  
15 were not granted by the end of the preceding year. Tax credits shall  
16 not be allowed for a taxpayer receiving benefits under the Employment  
17 and Investment Growth Act, the Nebraska Advantage Act, or the  
18 Nebraska Advantage Rural Development Act.

19           Sec. 4. Original sections 77-5806 and 77-5905, Reissue  
20 Revised Statutes of Nebraska, and section 77-5725, Revised Statutes  
21 Supplement, 2013, are repealed.