

E AND R AMENDMENTS TO LB 538

Introduced by Hansen, 26, Chairman Enrollment and Review

1 1. Strike the original sections and all amendments thereto and
2 insert the following new sections:

3 Section 1. Section 50-1203, Revised Statutes Cumulative Supplement,
4 2014, is amended to read:

5 50-1203 For purposes of the Legislative Performance Audit Act:

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

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

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

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

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

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

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

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

24 (9) Performance audit means an objective and systematic examination
25 of evidence for the purpose of providing an independent assessment of the
26 performance of a government organization, program, activity, or function
27 in order to provide information to improve public accountability and

1 facilitate decisionmaking by parties with responsibility to oversee or
2 initiate corrective action. Performance audits may have a variety of
3 objectives, including the assessment of a program's effectiveness and
4 results, economy and efficiency, internal control, and compliance with
5 legal or other requirements;

6 (10) Preaudit inquiry means an investigatory process during which
7 the office gathers and examines evidence to determine if a performance
8 audit topic has merit;~~and~~

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

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

15 Sec. 2. Section 50-1204, Revised Statutes Cumulative Supplement,
16 2014, is amended to read:

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

1 Committee. The Legislative Performance Audit Committee ~~committee~~ shall be
2 subject to all rules prescribed by the Legislature. The committee shall
3 be reconstituted at the beginning of each Legislature and shall meet as
4 needed.

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

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

18 50-1206 (1) Requests for performance audits may be made by the
19 Governor, any other constitutional officer of the State of Nebraska, a
20 legislator, the Legislative Auditor, the Legislative Fiscal Analyst, or
21 the Director of Research of the Legislature.

22 (2) Performance audit requests shall be submitted to the committee
23 chairperson or Legislative Auditor by letter or on a form developed by
24 the Legislative Auditor.

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

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

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

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

5 50-1208 (1) The committee shall, by majority vote, adopt requests
6 for performance audit. The committee chairperson shall notify each
7 requester of any action taken on his or her request.

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

11 (3) Following notification, the office shall arrange an entrance
12 conference to provide the agency with further information about the audit
13 process. The agency director shall inform the agency staff, in writing,
14 of the performance audit and shall instruct agency staff to cooperate
15 fully with the office.

16 (4) After the entrance conference, the office shall conduct the
17 research necessary to draft a scope statement for consideration by the
18 committee. The scope statement shall identify the specific issues to be
19 addressed in the audit. The committee shall, by majority vote, adopt,
20 reject, or amend and adopt the scope statement prepared by the office.

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

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

6 Sec. 5. Section 50-1209, Revised Statutes Cumulative Supplement,
7 2014, is amended to read:

8 50-1209 (1) Tax incentive performance audits shall be conducted by
9 the office pursuant to this section on the following tax incentive
10 programs:

11 (a) The Angel Investment Tax Credit Act;

12 (b) The Beginning Farmer Tax Credit Act;

13 (c) The Nebraska Advantage Act;

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

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

16 (f) The Nebraska Advantage Rural Development Act;

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

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

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

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

31 (3) Each tax incentive performance audit conducted by the office

1 pursuant to this section shall include the following:

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

4 (i) Strengthening the state's economy overall by attracting new
5 business to the state, expanding existing businesses, increasing
6 employment, creating high-quality jobs, and increasing business
7 investment;

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

9 (iii) Diversifying the state's economy and positioning Nebraska for
10 the future by stimulating entrepreneurial, high-tech, and renewable
11 energy firms; and

12 (iv) Any other program-specific goals found in the statutes for the
13 tax incentive program being evaluated;

14 (b) An analysis of the economic and fiscal impacts of the tax
15 incentive program. The analysis may take into account the following
16 considerations in addition to other relevant factors:

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

18 (ii) The results of the tax incentive for the economy of Nebraska as
19 a whole. This consideration includes both direct and indirect impacts
20 generally and any effects on other Nebraska businesses; and

21 (iii) A comparison to the results of other economic development
22 strategies with similar goals, other policies, or other incentives;

23 (c) An assessment of whether adequate protections are in place to
24 ensure the fiscal impact of the tax incentive does not increase
25 substantially beyond the state's expectations in future years;

26 (d) An assessment of the fiscal impact of the tax incentive on the
27 budgets of local governments, if applicable; and

28 (e) Recommendations for any changes to statutes or rules and
29 regulations that would allow the tax incentive program to be more easily
30 evaluated in the future, including changes to data collection, reporting,
31 sharing of information, and clarification of goals.

1 ~~Upon approval of an audit plan pursuant to section 50-1208, the~~
2 ~~agency shall be notified in writing of the specific scope of the audit~~
3 ~~and the projected deadline for completion of the office's report. If the~~
4 ~~office needs information from a political subdivision or entity thereof~~
5 ~~to effectively conduct a performance audit of an agency, the political~~
6 ~~subdivision or entity thereof shall provide information, on request, to~~
7 ~~the office.~~

8 Sec. 6. Section 50-1210, Revised Statutes Cumulative Supplement,
9 2014, is amended to read:

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

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

22 (3) When the Legislative Auditor provides the report to the agency,
23 the agency shall have twenty business days from the date of receipt of
24 the report to provide a written response. Any written response received
25 from the agency shall be attached to the committee report. The agency
26 shall not release any part of the report to any person outside the
27 agency, except that an agency may discuss the report with the Governor.
28 The Governor shall not release any part of the report.

29 (4) Following receipt of any written response from the agency, the
30 Legislative Auditor shall prepare a brief written summary of the
31 response, including a description of any significant disagreements the

1 agency has with the office's report or recommendations.

2 Sec. 7. Section 50-1211, Revised Statutes Cumulative Supplement,
3 2014, is amended to read:

4 50-1211 (1) The committee shall review the office's report, the
5 agency's response, the Legislative Auditor's summary of the agency's
6 response, and the Legislative Fiscal Analyst's opinion prescribed in
7 section 50-1210. The committee may amend and shall adopt or reject each
8 recommendation in the report and indicate whether each recommendation can
9 be implemented by the agency within its current appropriation. The
10 adopted recommendations shall be incorporated into a committee report,
11 which shall be approved by majority vote.

12 (2) The committee report shall include, but not be limited to, the
13 office's report, the agency's written response to the report, the
14 Legislative Auditor's summary of the agency response, the committee's
15 recommendations, and any opinions of the Legislative Fiscal Analyst
16 regarding whether the committee's recommendations can be implemented by
17 the agency within its current appropriation.

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

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

1 public hearing.

2 (5) Once the committee has approved its report, the committee shall,
3 by majority vote, cause the committee report to be released to all
4 members of the Legislature and to the public. The report submitted to the
5 members of the Legislature shall be submitted electronically. The
6 committee may, by majority vote, release the committee report or portions
7 thereof prior to public release of the report. Each tax incentive
8 performance audit report shall also be presented at a joint hearing of
9 the Appropriations Committee and Revenue Committee of the Legislature.

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

12 50-1212 (1) Within forty business days following the release of the
13 committee report, the agency shall provide to the committee a written
14 implementation plan describing the action planned and timeframe for
15 accomplishment of each of the recommendations contained in the committee
16 report, except that the committee may waive such requirement for tax
17 incentive performance audits.

18 (2) The agency director shall make every effort to fully implement
19 the recommendations that can be implemented within the limits of the
20 agency's current appropriation. For those recommendations which require
21 additional appropriations or the drafting of legislation, the committee
22 shall sponsor the legislation or present the proposal for additional or
23 revised appropriations to the Appropriations Committee of the
24 Legislature.

25 (3 2) The Legislative Performance Audit Committee shall establish a
26 system to ascertain and monitor agency conformity to the recommendations
27 contained in the committee report and compliance with any statutory
28 changes resulting from the report recommendations.

29 Sec. 9. Section 77-1116, Revised Statutes Cumulative Supplement,
30 2014, is amended to read:

31 77-1116 (1) A qualified community development entity that seeks to

1 have an equity investment or long-term debt security designated as a
2 qualified equity investment and eligible for tax credits under the New
3 Markets Job Growth Investment Act shall apply to the Tax Commissioner.
4 There shall be no new applications for such designation filed under this
5 section after December 31, 2019.

6 (2) The qualified community development entity shall submit an
7 application on a form that the Tax Commissioner provides that includes:

8 (a) Evidence of the entity's certification as a qualified community
9 development entity, including evidence of the service area of the entity
10 that includes this state;

11 (b) A copy of the allocation agreement executed by the entity, or
12 its controlling entity, and the Community Development Financial
13 Institutions Fund referred to in section 77-1109;

14 (c) A certificate executed by an executive officer of the entity
15 attesting that the allocation agreement remains in effect and has not
16 been revoked or cancelled by the Community Development Financial
17 Institutions Fund referred to in section 77-1109;

18 (d) A description of the proposed amount, structure, and purchaser
19 of the equity investment or long-term debt security;

20 (e) Identifying information for any taxpayer eligible to utilize tax
21 credits earned as a result of the issuance of the qualified equity
22 investment;

23 (f) Information regarding the proposed use of proceeds from the
24 issuance of the qualified equity investment; and

25 (g) A nonrefundable application fee of five thousand dollars.

26 (3) Within thirty days after receipt of a completed application
27 containing the information necessary for the Tax Commissioner to certify
28 a potential qualified equity investment, including the payment of the
29 application fee, the Tax Commissioner shall grant or deny the application
30 in full or in part. If the Tax Commissioner denies any part of the
31 application, the Tax Commissioner shall inform the qualified community

1 development entity of the grounds for the denial. If the qualified
2 community development entity provides any additional information required
3 by the Tax Commissioner or otherwise completes its application within
4 fifteen days after the notice of denial, the application shall be
5 considered completed as of the original date of submission. If the
6 qualified community development entity fails to provide the information
7 or complete its application within the fifteen-day period, the
8 application remains denied and must be resubmitted in full with a new
9 submission date.

10 (4 3) If the application is deemed complete, the Tax Commissioner
11 shall certify the proposed equity investment or long-term debt security
12 as a qualified equity investment that is eligible for tax credits,
13 subject to the limitations contained in section 77-1115. The Tax
14 Commissioner shall provide written notice of the certification to the
15 qualified community development entity. The notice shall include the
16 names of those taxpayers who are eligible to utilize the credits and
17 their respective credit amounts. If the names of the taxpayers who are
18 eligible to utilize the credits change due to a transfer of a qualified
19 equity investment or a change in an allocation pursuant to section
20 77-1114, the qualified community development entity shall notify the Tax
21 Commissioner of such change.

22 (5 4) The Tax Commissioner shall certify qualified equity
23 investments in the order applications are received. Applications received
24 on the same day shall be deemed to have been received simultaneously. For
25 applications received on the same day and deemed complete, the Tax
26 Commissioner shall certify, consistent with remaining tax credit
27 capacity, qualified equity investments in proportionate percentages based
28 upon the ratio of the amount of qualified equity investment requested in
29 an application to the total amount of qualified equity investments
30 requested in all applications received on the same day.

31 (6 5) Once the Tax Commissioner has certified qualified equity

1 investments that, on a cumulative basis, are eligible for the maximum
2 limitation contained in section 77-1115, the Tax Commissioner may not
3 certify any more qualified equity investments for that fiscal year. If a
4 pending request cannot be fully certified, the Tax Commissioner shall
5 certify the portion that may be certified unless the qualified community
6 development entity elects to withdraw its request rather than receive
7 partial credit.

8 (7 6) Within thirty days after receiving notice of certification,
9 the qualified community development entity shall issue the qualified
10 equity investment and receive cash in the amount of the certified amount.
11 The qualified community development entity shall provide the Tax
12 Commissioner with evidence of the receipt of the cash investment within
13 ten business days after receipt. If the qualified community development
14 entity does not receive the cash investment and issue the qualified
15 equity investment within thirty days after receipt of the certification
16 notice, the certification shall lapse and the entity may not issue the
17 qualified equity investment without reapplying to the Tax Commissioner
18 for certification. A certification that lapses reverts back to the Tax
19 Commissioner and may be reissued only in accordance with the application
20 process outlined in this section.

21 Sec. 10. Section 77-27,187.02, Revised Statutes Cumulative
22 Supplement, 2014, is amended to read:

23 77-27,187.02 (1) To earn the incentives set forth in the Nebraska
24 Advantage Rural Development Act, the taxpayer shall file an application
25 for an agreement with the Tax Commissioner. There shall be no new
26 applications for incentives filed under this section after December 31,
27 2019.

28 (2) The application shall contain:

29 (a) A written statement describing the full expected employment or
30 type of livestock production and the investment amount for a qualified
31 business, as described in section 77-27,189, in this state;

1 (b) Sufficient documents, plans, and specifications as required by
2 the Tax Commissioner to support the plan and to define a project; and

3 (c) An application fee of five hundred dollars. The fee shall be
4 remitted to the State Treasurer for credit to the Nebraska Incentives
5 Fund. The application and all supporting information shall be
6 confidential except for the name of the taxpayer, the location of the
7 project, and the amounts of increased employment or investment.

8 (3)(a) The Tax Commissioner shall approve the application and
9 authorize the total amount of credits expected to be earned as a result
10 of the project if he or she is satisfied that the plan in the application
11 defines a project that (i) meets the requirements established in section
12 77-27,188 and such requirements will be reached within the required time
13 period and (ii) for projects other than livestock modernization or
14 expansion projects, is located in an eligible county, city, or village.

15 (b) The Tax Commissioner shall not approve further applications once
16 the expected credits from the approved projects total two million five
17 hundred thousand dollars in each of fiscal years 2004-05 and 2005-06,
18 three million dollars in each of fiscal years 2006-07 through 2008-09,
19 and four million dollars in fiscal year 2009-10. For applications filed
20 in calendar years 2010 and 2011, the Tax Commissioner shall not approve
21 further applications once the expected credits from the approved projects
22 total four million dollars. For applications filed in calendar year 2012
23 and each year thereafter, the Tax Commissioner shall not approve further
24 applications once the expected credits from the approved projects total
25 one million dollars. Four hundred dollars of the application fee shall be
26 refunded to the applicant if the application is not approved because the
27 expected credits from approved projects exceed such amounts. It is the
28 intent of the Legislature that all tax credits deemed unallocated for
29 this section for calendar year 2011 shall be used for purposes of the
30 Angel Investment Tax Credit Act.

31 (c) Applications for benefits shall be considered in the order in

1 which they are received.

2 (d)(i) For applications filed in calendar year 2011, applications
3 shall be filed by July 1 and shall be complete by August 1 of the
4 calendar year. Any application that is filed after July 1 or that is not
5 complete on August 1 shall be considered to be filed during the following
6 calendar year.

7 (ii) For applications filed in calendar year 2012 and each year
8 thereafter, applications shall be filed by November 1 and shall be
9 complete by December 1 of each calendar year. Any application that is
10 filed after November 1 or that is not complete on December 1 shall be
11 considered to be filed during the following calendar year.

12 (4) After approval, the taxpayer and the Tax Commissioner shall
13 enter into a written agreement. The taxpayer shall agree to complete the
14 project, and the Tax Commissioner, on behalf of the State of Nebraska,
15 shall designate the approved plans of the taxpayer as a project and, in
16 consideration of the taxpayer's agreement, agree to allow the taxpayer to
17 use the incentives contained in the Nebraska Advantage Rural Development
18 Act up to the total amount that were authorized by the Tax Commissioner
19 at the time of approval. The application, and all supporting
20 documentation, to the extent approved, shall be considered a part of the
21 agreement. The agreement shall state:

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

24 (b) The time period under the act in which the required level must
25 be met;

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

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

29 (e) The maximum amount of credits authorized.

30 Sec. 11. Section 77-2912, Revised Statutes Cumulative Supplement,
31 2014, is amended to read:

1 77-2912 There shall be no new applications filed under the Nebraska
2 Job Creation and Mainstreet Revitalization Act after December 31, 2019
3 ~~2018~~. All applications and all credits pending or approved before such
4 date shall continue in full force and effect, except that no credits
5 shall be allocated under section 77-2905, issued under section 77-2906,
6 or used on any tax return or similar filing after December 31, 2024.

7 Sec. 12. Section 77-5208, Reissue Revised Statutes of Nebraska, is
8 amended to read:

9 77-5208 The board shall meet at least twice during the year. The
10 board shall review pending applications in order to approve and certify
11 beginning farmers and livestock producers as eligible for the programs
12 provided by the board, to approve and certify owners of agricultural
13 assets as eligible for the tax credits authorized by sections 77-5211 to
14 77-5213, and to approve and certify qualified beginning farmers and
15 livestock producers as eligible for the tax credit authorized by section
16 77-5209.01 and for qualification to claim an exemption of taxable
17 tangible personal property as provided by section 77-5209.02. No new
18 applications for any such programs, tax credits, or exemptions shall be
19 approved or certified by the board after December 31, 2019. Any action
20 taken by the board regarding approval and certification of program
21 eligibility, granting of tax credits, or termination of rental agreements
22 shall require the affirmative vote of at least four members of the board.

23 Sec. 13. 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, 2017. All complete project applications filed on or before
31 December 31, 2017, shall be considered by the Tax Commissioner and

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

5 (b) Tier 2, (i) investment in qualified property of at least three
6 million dollars and the hiring of at least thirty new employees or (ii)
7 for a large data center project, investment in qualified property for the
8 data center of at least two hundred million dollars and the hiring for
9 the data center of at least thirty new employees. There shall be no new
10 project applications for benefits under this tier filed after December
11 31, 2017. All complete project applications filed on or before December
12 31, 2017, shall be considered by the Tax Commissioner and approved if the
13 project and taxpayer qualify for benefits. Agreements may be executed
14 with regard to completed project applications filed on or before December
15 31, 2017. All project agreements pending, approved, or entered into
16 before such date shall continue in full force and effect;

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

25 (d) Tier 4, investment in qualified property of at least ten million
26 dollars and the hiring of at least one hundred new employees. There shall
27 be no new project applications for benefits under this tier filed after
28 December 31, 2017. All complete project applications filed on or before
29 December 31, 2017, shall be considered by the Tax Commissioner and
30 approved if the project and taxpayer qualify for benefits. Agreements may
31 be executed with regard to completed project applications filed on or

1 before December 31, 2017. All project agreements pending, approved, or
2 entered into before such date shall continue in full force and effect;

3 (e) Tier 5, (i) investment in qualified property of at least thirty
4 million dollars or (ii) for the production of electricity by using one or
5 more sources of renewable energy to produce electricity for sale as
6 described in subdivision (1)(j) of section 77-5715, investment in
7 qualified property of at least twenty million dollars. Failure to
8 maintain an average number of equivalent employees as defined in section
9 77-5727 greater than or equal to the number of equivalent employees in
10 the base year shall result in a partial recapture of benefits. There
11 shall be no new project applications for benefits under this tier filed
12 after December 31, 2017. All complete project applications filed on or
13 before December 31, 2017, shall be considered by the Tax Commissioner and
14 approved if the project and taxpayer qualify for benefits. Agreements may
15 be executed with regard to completed project applications filed on or
16 before December 31, 2017. All project agreements pending, approved, or
17 entered into before such date shall continue in full force and effect;
18 and

19 (f) Tier 6, investment in qualified property of at least ten million
20 dollars and the hiring of at least seventy-five new employees or the
21 investment in qualified property of at least one hundred million dollars
22 and the hiring of at least fifty new employees. There shall be no new
23 project applications for benefits under this tier filed after December
24 31, 2017. All complete project applications filed on or before December
25 31, 2017, shall be considered by the Tax Commissioner and approved if the
26 project and taxpayer qualify for benefits. Agreements may be executed
27 with regard to completed project applications filed on or before December
28 31, 2017 before January 1, 2018. All project agreements pending,
29 approved, or entered into before such date shall continue in full force
30 and effect.

31 (2) When the taxpayer has met the required levels of employment and

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

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

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

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

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

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

27 (v) Tangible personal property by a contractor or repairperson after
28 appointment as a purchasing agent of the taxpayer when such property is
29 both (A) incorporated into real estate as a part of a project and (B)
30 annexed to, but not incorporated into, real estate as a part of a
31 project. The refund shall be based on fifty percent of the contract

1 price, excluding any land, as the cost of materials subject to the sales
2 and use tax; and

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

11 (3) Any taxpayer who qualifies for a tier 1, tier 2, tier 3, or tier
12 4 project shall be entitled to a credit equal to three percent times the
13 average wage of new employees times the number of new employees if the
14 average wage of the new employees equals at least sixty percent of the
15 Nebraska average annual wage for the year of application. The credit
16 shall equal four percent times the average wage of new employees times
17 the number of new employees if the average wage of the new employees
18 equals at least seventy-five percent of the Nebraska average annual wage
19 for the year of application. The credit shall equal five percent times
20 the average wage of new employees times the number of new employees if
21 the average wage of the new employees equals at least one hundred percent
22 of the Nebraska average annual wage for the year of application. The
23 credit shall equal six percent times the average wage of new employees
24 times the number of new employees if the average wage of the new
25 employees equals at least one hundred twenty-five percent of the Nebraska
26 average annual wage for the year of application. For computation of such
27 credit:

28 (a) Average annual wage means the total compensation paid to
29 employees during the year at the project who are not base-year employees
30 and who are paid wages equal to at least sixty percent of the Nebraska
31 average weekly wage for the year of application, excluding any

1 compensation in excess of one million dollars paid to any one employee
2 during the year, divided by the number of equivalent employees making up
3 such total compensation;

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

10 (c) Nebraska average annual wage means the Nebraska average weekly
11 wage times fifty-two.

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

17 (5) Any taxpayer who has met the required levels of employment and
18 investment for a tier 2 or tier 4 project shall receive a credit equal to
19 ten percent of the investment made in qualified property at the project.
20 Any taxpayer who has met the required levels of investment and employment
21 for a tier 1 project shall receive a credit equal to three percent of the
22 investment made in qualified property at the project. Any taxpayer who
23 has met the required levels of investment and employment for a tier 6
24 project shall receive a credit equal to fifteen percent of the investment
25 made in qualified property at the project.

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

30 (7) The credit prescribed in subsection (5) of this section shall
31 also be allowable during the first year of the entitlement period for

1 investment in qualified property at the project after the date of the
2 application and before the required levels of employment and investment
3 were met.

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

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

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

27 (iii) A taxpayer who has filed an application that describes a tier
28 2 large data center project or a tier 5 project that is sequential to a
29 tier 2 large data center project for which the entitlement period has
30 expired shall receive the exemption of all property in subdivision (8)(c)
31 of this section beginning any January 1 after the acquisition of the

1 property. Such property shall be eligible for exemption from the tax on
2 personal property from the January 1 preceding the first claim for
3 exemption approved under this subdivision through the ninth December 31
4 after the year the first claim for exemption is approved.

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

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

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

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

26 (ii) Computer systems, made up of equipment that is interconnected
27 in order to enable the acquisition, storage, manipulation, management,
28 movement, control, display, transmission, or reception of data involving
29 computer software and hardware, used for business information processing
30 which require environmental controls of temperature and power and which
31 are capable of simultaneously supporting more than one transaction and

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

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

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

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

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

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

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

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

17 (d) For a tier 2 large data center project, beginning October 1,
18 2012, and each October 1 thereafter, the average Producer Price Index for
19 all commodities, published by the United States Department of Labor,
20 Bureau of Labor Statistics, for the most recent twelve available periods
21 shall be divided by the Producer Price Index for the first quarter of
22 2012 and the result multiplied by the applicable investment threshold.
23 The investment thresholds shall be adjusted for cumulative inflation
24 since 2012.

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

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

1 Sec. 14. Section 77-5806, Revised Statutes Cumulative Supplement,
2 2014, is amended to read:

3 77-5806 The Nebraska Advantage Research and Development Act shall be
4 operative for all tax years beginning or deemed to begin on or after
5 January 1, 2006, under the Internal Revenue Code of 1986, as amended. No
6 business firm shall be allowed to first claim the credit for any tax year
7 beginning or deemed to begin after December 31, 2019 ~~2017~~, under the
8 Internal Revenue Code of 1986, as amended.

9 Sec. 15. Section 77-5905, Revised Statutes Cumulative Supplement,
10 2014, is amended to read:

11 77-5905 (1) If the Department of Revenue determines that an
12 application meets the requirements of section 77-5904 and that the
13 investment or employment is eligible for the credit and (a) the applicant
14 is actively engaged in the operation of the microbusiness or will be
15 actively engaged in the operation upon its establishment, (b) the
16 majority of the assets of the microbusiness are located in a distressed
17 area or will be upon its establishment, (c) the applicant will make new
18 investment or employment in the microbusiness, and (d) the new investment
19 or employment will create new income or jobs in the distressed area, the
20 department shall approve the application and authorize tentative tax
21 credits to the applicant within the limits set forth in this section and
22 certify the amount of tentative tax credits approved for the applicant.
23 Applications for tax credits shall be considered in the order in which
24 they are received.

25 (2) The department may approve applications up to the adjusted limit
26 for each calendar year beginning January 1, 2006, through December 31,
27 2019 ~~2017~~. After applications totaling the adjusted limit have been
28 approved for a calendar year, no further applications shall be approved
29 for that year. The adjusted limit in a given year is two million dollars
30 plus tentative tax credits that were not granted by the end of the
31 preceding year. Tax credits shall not be allowed for a taxpayer receiving

1 benefits under the Employment and Investment Growth Act, the Nebraska
2 Advantage Act, or the Nebraska Advantage Rural Development Act.

3 Sec. 16. Original sections 50-1206, 50-1212, and 77-5208, Reissue
4 Revised Statutes of Nebraska, and sections 50-1203, 50-1204, 50-1208,
5 50-1209, 50-1210, 50-1211, 77-1116, 77-27,187.02, 77-2912, 77-5725,
6 77-5806, and 77-5905, Revised Statutes Cumulative Supplement, 2014, are
7 repealed.

8 2. On page 1, strike lines 2 through 8 and insert "50-1206, 50-1212,
9 and 77-5208, Reissue Revised Statutes of Nebraska, and sections 50-1203,
10 50-1204, 50-1208, 50-1209, 50-1210, 50-1211, 77-1116, 77-27,187.02,
11 77-2912, 77-5725, 77-5806, and 77-5905, Revised Statutes Cumulative
12 Supplement, 2014; to require tax incentive performance audits as
13 prescribed; to provide, change, and eliminate requirements of the
14 Legislative Performance Audit Act; to provide and change sunset dates for
15 certain tax incentive programs; to harmonize provisions; and to repeal
16 the original sections."