

## LEGISLATIVE BILL 424

Approved by the Governor May 26, 2015

Introduced by Davis, 43; Haar, 21; Kolowski, 31; Mello, 5; Nordquist, 7;  
Pansing Brooks, 28.

A BILL FOR AN ACT relating to revenue and taxation; to amend section 13-518, Reissue Revised Statutes of Nebraska, and sections 77-105, 77-202, 77-6201, 77-6202, 77-6203, and 77-6204, Revised Statutes Cumulative Supplement, 2014; to change provisions relating to the nameplate capacity tax; to redefine terms; to change a property tax exemption; to harmonize provisions; to provide an operative date; and to repeal the original sections.

Be it enacted by the people of the State of Nebraska,

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

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

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

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

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

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

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

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

(7) State aid means:

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

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

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

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

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

(f) For local public health departments as defined in section 71-1626, state aid as distributed under section 71-1628.08.

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

77-105 The term tangible personal property includes all personal property possessing a physical existence, excluding money. The term tangible personal

property also includes trade fixtures, which means machinery and equipment, regardless of the degree of attachment to real property, used directly in commercial, manufacturing, or processing activities conducted on real property, regardless of whether the real property is owned or leased, and all depreciable tangible personal property described in subsection (9) of section 77-202 used in the generation of electricity using wind, solar, biomass, or landfill gas as the fuel source. The term intangible personal property includes all other personal property, including money.

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

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

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

(i) Property of the state and its governmental subdivisions means (A) property held in fee title by the state or a governmental subdivision or (B) property beneficially owned by the state or a governmental subdivision in that it is used for a public purpose and is being acquired under a lease-purchase agreement, financing lease, or other instrument which provides for transfer of legal title to the property to the state or a governmental subdivision upon payment of all amounts due thereunder. If the property to be beneficially owned by a governmental subdivision has a total acquisition cost that exceeds the threshold amount or will be used as the site of a public building with a total estimated construction cost that exceeds the threshold amount, then such property shall qualify for an exemption under this section only if the question of acquiring such property or constructing such public building has been submitted at a primary, general, or special election held within the governmental subdivision and has been approved by the voters of the governmental subdivision. For purposes of this subdivision, threshold amount means the greater of fifty thousand dollars or six-tenths of one percent of the total actual value of real and personal property of the governmental subdivision that will beneficially own the property as of the end of the governmental subdivision's prior fiscal year; and

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

(b) Unleased property of the state or its governmental subdivisions which is not being used or developed for use for a public purpose but upon which a payment in lieu of taxes is paid for public safety, rescue, and emergency services and road or street construction or maintenance services to all governmental units providing such services to the property. Except as provided in Article VIII, section 11, of the Constitution of Nebraska, the payment in lieu of taxes shall be based on the proportionate share of the cost of providing public safety, rescue, or emergency services and road or street construction or maintenance services unless a general policy is adopted by the governing body of the governmental subdivision providing such services which provides for a different method of determining the amount of the payment in lieu of taxes. The governing body may adopt a general policy by ordinance or resolution for determining the amount of payment in lieu of taxes by majority vote after a hearing on the ordinance or resolution. Such ordinance or resolution shall nevertheless result in an equitable contribution for the cost of providing such services to the exempt property;

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

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

(e) Household goods and personal effects not owned or used for financial gain or profit to either the owner or user.

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

land.

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

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

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

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

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

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

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

(10) Any tangible personal property that is acquired by a person operating a data center located in this state, that is assembled, engineered, processed, fabricated, manufactured into, attached to, or incorporated into other tangible personal property, both in component form or that of an assembled product, for the purpose of subsequent use at a physical location outside this state by the person operating a data center shall be exempt from the personal property tax. Such exemption extends to keeping, retaining, or exercising any right or power over tangible personal property in this state for the purpose of subsequently transporting it outside this state for use thereafter outside this state. For purposes of this subsection, data center means 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.

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

77-6201 The Legislature finds and declares:

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

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

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

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

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

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

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

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

(3) Renewable Wind energy generation facility means (a) a facility that generates electricity using wind as the fuel source or (b) a facility that generates electricity using solar, biomass, or landfill gas as the fuel source if such facility was installed on or after the operative date of this act and

has a nameplate capacity of one hundred kilowatts or more.

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

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

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

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

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

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

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

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

(b) The tax shall be imposed beginning the first calendar year the renewable energy generation facility wind turbine is commissioned. A renewable wind energy generation facility that uses wind as the fuel source which was commissioned prior to July 15, 2010, shall be subject to the tax levied pursuant to sections 77-6201 to 77-6204 on and after January 1, 2010. The amount of property tax on depreciable tangible personal property previously paid on a renewable wind energy generation facility that uses wind as the fuel source which was commissioned prior to July 15, 2010, which is greater than the amount that would have been paid pursuant to sections 77-6201 to 77-6204 from the date of commissioning until January 1, 2010, shall be credited against any tax due under Chapter 77, and any amount so credited that is unused in any tax year shall be carried over to subsequent tax years until fully utilized.

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

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

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

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

(6)(a) On March 1 of each year, the owner of a renewable wind energy generation facility shall file with the Department of Revenue a report on the nameplate capacity of the facility for the previous year from January 1 through December 31. All taxes shall be due on April 1 and shall be delinquent if not paid on a quarterly basis on April 1 and each quarter thereafter. Delinquent quarterly payments shall draw interest at the rate provided for in section 45-104.02, as such rate may from time to time be adjusted.

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

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

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

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

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

77-6204 (1) The county treasurer shall distribute all revenue received from the Department of Revenue pursuant to section 77-6203 to local taxing entities which, but for such personal property tax exemption, would have

received distribution of personal property tax revenue from depreciable personal property used directly in the generation of electricity using wind, solar, biomass, or landfill gas as the fuel source.

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

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

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

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

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