

LEGISLATURE OF NEBRASKA
ONE HUNDRED NINTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 228

Introduced by Dorn, 30.

Read first time January 14, 2025

Committee:

1 A BILL FOR AN ACT relating to the Legislative Performance Audit Act; to
2 amend sections 50-1203, 50-1204, 50-1205.01, 50-1211, and 50-1213,
3 Reissue Revised Statutes of Nebraska, and section 50-1209, Revised
4 Statutes Cumulative Supplement, 2024; to redefine a term; to update
5 obsolete provisions; to change requirements for tax incentive
6 performance audits as prescribed; to provide for documents that are
7 not subject to a public records request; and to repeal the original
8 sections.
9 Be it enacted by the people of the State of Nebraska,

1 **Section 1.** Section 50-1203, Reissue Revised Statutes of Nebraska, is
2 amended to read:

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

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

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

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

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

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

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

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

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

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

1 (10) Preaudit inquiry means an investigatory process during which
2 the office gathers and examines evidence to determine if a performance
3 audit topic has merit;

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

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

10 **Sec. 2.** Section 50-1204, Reissue Revised Statutes of Nebraska, is
11 amended to read:

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

31 (2) The Legislative Auditor shall ensure that performance audit work

1 conducted by the office conforms with performance audit standards
2 contained in the Government Auditing Standards (2024 ~~2018~~ Revision) as
3 required in section 50-1205.01. The office shall be composed of the
4 Legislative Auditor and other employees of the Legislature employed to
5 conduct performance audits. The office shall be the custodian of all
6 records generated by the committee or office except as provided by
7 section 50-1213, subsection (11) of section 77-2711, or subdivision (10)
8 (a) of section 77-27,119. The office shall inform the Legislative Fiscal
9 Analyst of its activities and consult with him or her as needed. The
10 office shall operate under the general direction of the committee.

11 **Sec. 3.** Section 50-1205.01, Reissue Revised Statutes of Nebraska, is
12 amended to read:

13 50-1205.01 (1) Except as provided in subsections (2) and (3) of this
14 section, performance audits done under the terms of the Legislative
15 Performance Audit Act shall be conducted in accordance with the generally
16 accepted government auditing standards for performance audits contained
17 in the Government Auditing Standards (2024 ~~2018~~ Revision), published by
18 the Comptroller General of the United States, Government Accountability
19 Office.

20 (2) Standards requiring continuing education for employees of the
21 office shall be met as practicable based on the availability of training
22 funds.

23 (3) The frequency of the required external quality control review
24 shall be determined by the committee.

25 (4) At the beginning of each biennial legislative session, the
26 Legislative Auditor shall create a plan for meeting such standards and
27 provide the plan to the chairperson of the Legislative Performance Audit
28 Committee.

29 **Sec. 4.** Section 50-1209, Revised Statutes Cumulative Supplement,
30 2024, is amended to read:

31 50-1209 (1) Tax incentive performance audits shall be conducted by

1 the office pursuant to this section on the following tax incentive
2 programs:

- 3 (a) The Beginning Farmer Tax Credit Act;
- 4 (b) The ImagiNE Nebraska Act;
- 5 (c) The Nebraska Advantage Microenterprise Tax Credit Act;
- 6 (d) The Nebraska Advantage Research and Development Act;
- 7 (e) The Nebraska Advantage Rural Development Act;
- 8 (f) The Nebraska Job Creation and Mainstreet Revitalization Act;
- 9 (g) The New Markets Job Growth Investment Act;
- 10 (h) The Urban Redevelopment Act; and
- 11 (i) Any other tax incentive program created by the Legislature for
12 the purpose of recruitment or retention of businesses in Nebraska. In
13 determining whether a future tax incentive program is enacted for the
14 purpose of recruitment or retention of businesses, the office shall
15 consider legislative intent, including legislative statements of purpose
16 and goals, and may also consider whether the tax incentive program is
17 promoted as a business incentive by the Department of Economic
18 Development or other relevant state agency.

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

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

25 (a) If applicable, an ~~an~~ analysis of whether the tax incentive
26 program is meeting the following goals:

- 27 (i) Strengthening the state's economy overall by:
 - 28 (A) Attracting new business to the state;
 - 29 (B) Expanding existing businesses;
 - 30 (C) Increasing employment, particularly employment of full-time
31 workers. The analysis shall consider whether the job growth in those

1 businesses receiving tax incentives is at least ten percent above
2 industry averages;

3 (D) Creating high-quality jobs; and

4 (E) Increasing business investment;

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

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

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

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

15 (i) The costs per full-time worker. When practical and applicable,
16 such costs shall be considered in at least the following two ways:

17 (A) By an estimation including the minimum investment required to
18 qualify for benefits; and

19 (B) By an estimation including all investment;

20 (ii) The extent to which the tax incentive changes business
21 behavior;

22 (iii) The results of the tax incentive for the economy of Nebraska
23 as a whole. This consideration includes both direct and indirect impacts
24 generally and any effects on other Nebraska businesses; and

25 (iv) A comparison to the results of other economic development
26 strategies with similar goals, other policies, or other incentives;

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

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

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

5 (4) For purposes of this section:

6 (a) Distressed area means an area of substantial unemployment as
7 determined by the Department of Labor pursuant to the Nebraska Workforce
8 Innovation and Opportunity Act;

9 (b) Full-time worker means an individual (i) who usually works
10 thirty-five hours per week or more, (ii) whose employment is reported to
11 the Department of Labor on two consecutive quarterly wage reports, and
12 (iii) who earns wages equal to or exceeding the state minimum wage;

13 (c) High-quality job means a job that:

14 (i) Averages at least thirty-five hours of employment per week;

15 (ii) Is reported to the Department of Labor on two consecutive
16 quarterly wage reports; and

17 (iii) Earns wages that are at least ten percent higher than the
18 statewide industry sector average and that equal or exceed:

19 (A) One hundred ten percent of the Nebraska average weekly wage if
20 the job is in a county with a population of less than one hundred
21 thousand inhabitants; or

22 (B) One hundred twenty percent of the Nebraska average weekly wage
23 if the job is in a county with a population of one hundred thousand
24 inhabitants or more;

25 (d) High-tech firm means a person or unitary group that has a
26 location with any of the following four-digit code designations under the
27 North American Industry Classification System as assigned by the
28 Department of Labor: 3341, 3342, 3344, 3345, 3364, 5112, 5182, 5191,
29 5413, 5415, or 5417;

30 (e) Nebraska average weekly wage means the most recent average
31 weekly wage paid by all employers in all counties in Nebraska as reported

1 by the Department of Labor by October 1 of each year;

2 (f) New business means a person or unitary group participating in a
3 tax incentive program that did not pay income taxes or wages in the state
4 more than two years prior to submitting an application under the tax
5 incentive program. For any tax incentive program without an application
6 process, new business means a person or unitary group participating in
7 the program that did not pay income taxes or wages in the state more than
8 two years prior to the first day of the first tax year for which a tax
9 benefit was earned;

10 (g) Renewable energy firm means a person or unitary group that has a
11 location with any of the following six-digit code designations under the
12 North American Industry Classification System as assigned by the
13 Department of Labor: 111110, 111150, 111199, 111930, 111991, 113310,
14 221111, 221113, 221114, 221115, 221116, 221117, 221118, 221121, 221122,
15 221330, 237130, 237990, 325193, 331511, 331512, 331513, 331523, 331524,
16 331529, 332111, 332112, 333511, 333611, 333612, 333613, 334519, 423830,
17 482111, 484230, 488510, 541360, 541370, 541620, 541690, 541714, or
18 541715;

19 (h) Rural area means any village or city of the second class in this
20 state or any county in this state with fewer than twenty-five thousand
21 residents; and

22 (i) Unitary group has the same meaning as in section 77-2734.04.

23 **Sec. 5.** Section 50-1211, Reissue Revised Statutes of Nebraska, is
24 amended to read:

25 50-1211 (1) The committee shall review the office's report, the
26 agency's response, the Legislative Auditor's summary of the agency's
27 response, and the Legislative Fiscal Analyst's opinion prescribed in
28 section 50-1210. The committee may amend and shall adopt or reject each
29 recommendation in the report and indicate whether each recommendation can
30 be implemented by the agency within its current appropriation. The
31 adopted recommendations shall be incorporated into a committee report,

1 which shall be approved by majority vote.

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

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

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

23 (5) Once the committee has approved its report, the committee shall,
24 by majority vote, cause the committee report to be released to all
25 members of the Legislature and to the public. The report submitted to the
26 members of the Legislature shall be submitted electronically. The
27 committee may, by majority vote, release the committee report or portions
28 thereof prior to public release of the report. Each tax incentive
29 performance audit report ~~may shall~~ also be presented at a joint hearing
30 of the Appropriations Committee and Revenue Committee of the Legislature.

31 **Sec. 6.** Section 50-1213, Reissue Revised Statutes of Nebraska, is

1 amended to read:

2 50-1213 (1) The office shall have access to any and all information
3 and records, confidential or otherwise, of any agency, in whatever form
4 they may be, including, but not limited to, direct access to all agency
5 databases containing relevant program information or data, unless the
6 office is denied such access by federal law or explicitly named and
7 denied such access by state law. If such a law exists, the agency shall
8 provide the committee with a written explanation of its inability to
9 produce such information and records and, after reasonable accommodations
10 are made, shall grant the office access to all information and records or
11 portions thereof that can legally be reviewed. Accommodations that may be
12 negotiated between the agency and the committee include, but are not
13 limited to, a requirement that specified information or records be
14 reviewed on agency premises and a requirement that specified working
15 papers be securely stored on agency premises.

16 (2) Upon receipt of a written request by the office for access to
17 any information or records, the agency shall provide to the office as
18 soon as is practicable and without delay, but not more than three
19 business days after actual receipt of the request, either (a) the
20 requested materials or (b)(i) if there is a legal basis for refusal to
21 comply with the request, a written denial of the request together with
22 the information specified in subsection (1) of this section or (ii) if
23 the entire request cannot with reasonable good faith efforts be fulfilled
24 within three business days after actual receipt of the request due to the
25 significant difficulty or the extensiveness of the request, a written
26 explanation, including the earliest practicable date for fulfilling the
27 request, and an opportunity for the office to modify or prioritize the
28 items within the request. No delay due to the significant difficulty or
29 the extensiveness of a request for access to information or records shall
30 exceed three calendar weeks after actual receipt of such request by any
31 agency. The three business days shall be computed by excluding the day

1 the request is received, after which the designated period of time begins
2 to run. Business day does not include a Saturday, a Sunday, or a day
3 during which the offices of the custodian of the public records are
4 closed.

5 (3) Except as provided in this section, any confidential information
6 or confidential records shared with the office shall remain confidential
7 and shall not be shared by an employee of the office with any person who
8 is not an employee of the office, including any member of the committee.

9 (4) Except as provided in subsection (11) of section 77-2711 and
10 subdivision (10)(d) of section 77-27,119, if any employee or former
11 employee of the office knowingly divulges or makes known, in any manner
12 not permitted by law, confidential information or confidential records,
13 he or she shall be guilty of a Class III misdemeanor and, in the case of
14 an employee, shall be dismissed.

15 (5) No proceeding of the committee or opinion or expression of any
16 member of the committee or office employee acting at the direction of the
17 committee shall be reviewable in any court. No member of the committee or
18 office employee acting at the direction of the committee shall be
19 required to testify or produce evidence in any judicial or administrative
20 proceeding concerning matters relating to the work of the office except
21 in a proceeding brought to enforce the Legislative Performance Audit Act.

22 (6) Pursuant to sections 84-712 and 84-712.01 and subdivision (5) of
23 section 84-712.05, the working papers obtained or produced by the
24 committee or office and correspondence between the office and an audited
25 agency shall not be considered public records. The committee may make the
26 working papers available for purposes of an external quality control
27 review as required by generally accepted government auditing standards.
28 However, any reports made from such external quality control review shall
29 not make public any information which would be considered confidential
30 when in the possession of the office.

31 **Sec. 7.** Original sections 50-1203, 50-1204, 50-1205.01, 50-1211,

- 1 and 50-1213, Reissue Revised Statutes of Nebraska, and section 50-1209,
- 2 Revised Statutes Cumulative Supplement, 2024, are repealed.