

Revised to reflect AM2009 and AM2236

**FISCAL NOTE**  
**LEGISLATIVE FISCAL ANALYST ESTIMATE**

<b>ESTIMATE OF FISCAL IMPACT – STATE AGENCIES (See narrative for political subdivision estimates)</b>				
	<b>FY 2022-23</b>		<b>FY 2023-24</b>	
	<b>EXPENDITURES</b>	<b>REVENUE</b>	<b>EXPENDITURES</b>	<b>REVENUE</b>
GENERAL FUNDS	\$26,250	See below		See below
CASH FUNDS				
FEDERAL FUNDS				
OTHER FUNDS				
<b>TOTAL FUNDS</b>	<b>\$26,260</b>	<b>See below</b>		<b>See below</b>

**Any Fiscal Notes received from state agencies and political subdivisions are attached following the Legislative Fiscal Analyst Estimate.**

LB1150 as amended by AM2009 and AM2236 makes the following changes:

AM2009 adds LB502 as amended by AM1514, LB817, LB985, and LB1094 to LB1150. The impacts are listed as follows:

LB502, AM1514

LB502 amends 77-5725 to exempt all sales and use taxes for a tier 2 large data center project or a tier 5 project that is sequential to a tier 2 large data center project imposed under the Local Option Revenue Act, the Nebraska Revenue Act of 1967, and sections 13-319, 13-2813, and 77-6403. Under current law, these projects are eligible for sales tax refunds pending an audit from the Department of Revenue. As such, there is no change in the amount of revenue reduction experienced by this legislation, however the timing would be changed and is subject to the timing of the execution of agreement from the taxpayer and certification of meeting required employment and investment levels. The Department of Revenue states that the timing of these claims would be indeterminable, we concur. However, it is likely that the revenue loss associated with this incentive will be felt earlier under an exemption system than under the current refund system. It is typical for the credits refunded to taxpayers under current legislation to be in the tens of millions of dollars.

LB817

LB817 clarifies that DOR may obtain employee social security numbers, changes the reporting timeline from calendar years to fiscal years, changes the recapture of sales tax reporting to the sales tax form from the income tax form. No fiscal impact.

LB985

LB985 creates an exception for the definition of “base year” under the ImagiNE Nebraska Act. When determining the base year for an application in 2021 or 2022, LB 985 provides that applicants that increased their equivalent employees in 2020 or 2021 due to the COVID-19 pandemic shall have their base year set to 2019. The Department of Revenue estimates LB 985 will have minimal fiscal impact. There is no basis to disagree with this estimate.

LB1094

LB1094 amends provisions of the ImagiNE Nebraska Act related to the summation of qualified equivalent employees. Under LB 1094, subdivision 6 of section 77-6815 is amended to qualify work completed at the employee’s Nebraska residence as equivalent to time spent at the qualified location. In effect, this allows businesses that began to offer telework schedules during the pandemic to meet the employee requirements under the ImagiNE Nebraska Act. The Department of Revenue estimates LB 1094 will have minimal fiscal impact. There is no basis to disagree with this estimate.

LB1150

LB1150 sets new reporting requirements for taxpayers to qualify for credits under the ImagiNE Nebraska Act and sets new requirements for the purpose of tax incentive performance audits.

The Department of Revenue estimates a one-time cost of \$26,250 to cover a programming charge paid to OCIO. No basis to disagree with their estimate.

AM2236 adds two new sections to LB1150. These sections would change the incentive refunds issued due to the Employment and Investment Growth Act or the Nebraska Advantage Act owed by a city of the Metropolitan or Primary class to have those refunds deducted from those city's local sales tax methods through a different method beginning with calendar year 2024. Repayments will be based upon estimates from DOR. No fiscal impact.

**State Agency Estimate**

State Agency Name: Department of Revenue Date Due LFO:  
 Approved by: Tony Fulton Date Prepared: 4/8/2022 Phone: 471-5896

	<u>FY 2022-2023</u>		<u>FY 2023-2024</u>		<u>FY 2024-2025</u>	
	<u>Expenditures</u>	<u>Revenue</u>	<u>Expenditures</u>	<u>Revenue</u>	<u>Expenditures</u>	<u>Revenue</u>
General Funds	\$26,250	See Below		See Below		See Below
Cash Funds						
Federal Funds						
Other Funds						
Total Funds	\$26,250	See Below		See Below		See Below

LB 1150 was a bill proposed by the Performance Audit Committee to require more information with respect to Nebraska ImagiNE Act applicants. The Revenue Committee adopted AM 2009 to combine a condensed version of LB 1150 with several other bills dealing primarily with tax incentives, namely LB 817, LB 502, LB 985, and LB 1094. The Legislature adopted AM 2236 on General File.

Sections 1 through 6, 10, 12, 13, 15, 18 through 21 are the original provisions of LB 817 which:

1. Clarify that the Department of Revenue (DOR) may obtain employee social security numbers under Neb. Rev. Stat. §77-376;
2. Amend Neb. Rev. Stat. §77-6837(5) (reporting) to change “December 31 of the prior year” to “June 30 of the current year” to match the fiscal year reporting period in §77-6837(1);
3. Correlate time of investment to the percent of completion in Neb. Rev. Stat. §77-6811;
4. Amend Neb. Rev. Stat. §77-6831(3)(b) to strike the word “income” in the last line. Recapture of sales tax exemptions will be reported on a sales tax form rather than an income tax form;
5. Clarify that with an employee leasing company situation, the denominator of the withholding ratio is only that client in Neb. Rev. Stat. §77-6832(1)(b);
6. Clarify that those whose applications are place on the wait list, because the base authority has been exceeded, maintain their base year. Neb. Rev. Stat. §77-6839(2)(a)(ii);
7. Change other Incentive Acts to provide for reporting on a fiscal year and accrual basis by October 31 to match the ImagiNE Nebraska Act by amending Neb. Rev. Stats. §§77-27,195, 77-4110, 77-4933, 77-5731, 77-5807, and 77-5907. AM 2009 changed each of these reporting provisions to require the presentation hearing in December of only even-numbered years rather than every year. The report itself is still due on October 31.

**Major Objects of Expenditure**

<u>Class Code</u>	<u>Classification Title</u>	<u>22-23 FTE</u>	<u>23-24 FTE</u>	<u>24-25 FTE</u>	<u>22-23 Expenditures</u>	<u>23-24 Expenditures</u>	<u>24-25 Expenditures</u>
	Benefits.....						
	Operating Costs.....				\$26,250		
	Travel.....						
	Capital Outlay.....						
	Capital Improvements.....						
	<b>Total.....</b>				\$26,250		

Section 7 would insert the provisions of LB 502 (2021) except that the authority to use a direct pay permit for a Nebraska Advantage Act project would be limited to a Tier 2 large data center (LDC) or Tier 5 sequential to Tier 2 LDC projects and AM 2009 imposes new disclosures that are described in Section 11. As amended Am 2009 amends Neb. Rev. Stat. §77-5725 of the Nebraska Advantage Act to allow taxpayers with Tier 2 LDC, or Tier 5 sequential to a Tier 2 LDC agreement to receive a direct pay permit and utilize a sales tax exemption in the place of a direct refund of sales and use taxes for purchases made during the entitlement period. The exemption covers sales and use tax, including local option tax, paid on purchases, including rentals, listed in 77-5725(2)(a), except that the exemption for subdivisions 77-5725(2)(a)(iii), (iv), and (v) are for the actual materials purchased.

Upon execution of the agreement or, for taxpayers whose agreement was executed prior to the effective date of this act within 60 days after the operative date of this act, the taxpayer will be issued a direct payment permit under 77-2705.01 notwithstanding the \$3 million limitation. The taxpayer will receive the certificate unless they opt out of the requirement.

Taxpayers who have received the permit must pay and remit sales and use tax until they meet the required employment and investment levels. Once the taxpayer has met levels, they receive the sales tax refund described in 77-5725(2)(a). For any year in which the taxpayer is not at the required levels, they must report all sales and use taxes owed for the period on their use tax return for the year.

Sections 8 and 9 harmonize this option in Neb. Rev. Stat. §§77-5726 and 77-5727.

Section 11 provides that this option is operative for existing agreements signed before the operative date of the section. The Tax Commissioner is to disclose the existence of the direct payment permit holder to each municipality where the project is located.

Section 14 is LB 985 and would amend the Nebraska ImagiNE Act, Neb. Rev. Stat. §77-6805, which is the definition of “base year.” Currently, the base year is the year prior to application except that if the application year is 2021, the base year employment is the larger of the employment in 2019 or 2020. LB 985 would add a second exception for companies applying in 2021 or 2022 that increased the number of new employees in either 2020 or 2021 in response to the COVID-19 pandemic. In that case, the base year would be 2019.

Section 16 is LB 1094 and would amend the definition of “Number of new employees” for purposes of the Nebraska ImagiNE Act (Neb. Rev. Stat. §77-6815) to allow employees who work both at the qualified location and who telework from their Nebraska home to count toward attaining the required levels of employment and earning benefits. Under current law, employees who work at the qualified location less than 50% of the time, are not considered employed at the qualified location. LB 1094 would provide an exception for hybrid teleworkers, that is, those that do some of both.

Section 17 is from the original LB 1150 and would require any agreement to contain requirements to provide:

1. The most recent taxable value and levy rates of all qualified locations;
2. If credits are used for job training pursuant to subdivision (1)(e) of section 77-6832, a program schedule of the job training activities; and

3. If credits are used for talent recruitment pursuant to subdivision (1)(e) of section 77-6832, the city and state where recruited employees lived when the talent recruitment activities took place.

AM 2236 inserted new sections, 2 and 3, and would amend Neb. Rev. Stat. §§77-2708 and 77-27,144. Incentive refunds issued due to the Employment and Investment Growth Act (LB 775) or the Nebraska Advantage Act that must be repaid by metropolitan or primary class cities will now be deducted from those city's local sales tax distributions through a different method beginning with calendar year 2024. Beginning then the repayment will be deducted in twelve equal installments based on an estimate made by DOR on March 1 of the prior year of the local sales tax refunds for each city that will be issued that calendar year. DOR is to notify both cities of the estimate, and the yearly estimates will be adjusted for the differences in the prior year between the estimate and the refunds actually issued. The remaining sections of AM 2009 will be renumbered in Enrollment and Review.

The operative dates are mixed, with the LB 502 and AM 2236 provisions operative January 1, 2023 and the LBs 985, 1094, and 1150 provisions operative three months after adjournment. The LB 817 provisions are operative on their effective date and the bill carries the emergency clause.

For Section 7 (LB 502) the fiscal impact on General Fund revenue cannot be determined due to the small number of projects yet large amount of investment and the timing of the credit claims is unclear if no exemptions are allowed. DOR is unable to generalize the behavior of only a few taxpayers.

For the remaining sections of the bill, DOR estimates minimal impact on General Fund revenue.

This bill will require a one-time programming charge of \$26,250 paid to the OCIO to update the 1170N Imagine Application.