

AMENDMENTS TO LB92

(Amendments to Standing Committee amendments, AM484)

Introduced by McDonnell, 5.

1 1. Insert the following new sections:

2 Sec. 78. Section 77-6832, Revised Statutes Cumulative Supplement,
3 2022, is amended to read:

4 77-6832 (1)(a) The credits prescribed in section 77-6831 for a year
5 shall be established by filing the forms required by the Tax Commissioner
6 with the income tax return for the taxable year which includes the end of
7 the year the credits were earned. The credits may be used and shall be
8 applied in the order in which they were first allowable under the Imagine
9 Nebraska Act. To the extent the taxpayer has credits under the Nebraska
10 Advantage Act or the Employment and Investment Growth Act still available
11 for use in a year or years which overlap the performance period or
12 carryover period of the Imagine Nebraska Act, the credits may be used and
13 shall be applied in the order in which they were first allowable, and
14 when there are credits of the same age, the older tax incentive program's
15 credits shall be applied first. The credits may be used after any other
16 nonrefundable credits to reduce the taxpayer's income tax liability
17 imposed by sections 77-2714 to 77-27,135. Credits may be used beginning
18 with the taxable year which includes December 31 of the year the required
19 minimum levels were reached. The last year for which credits may be used
20 is the taxable year which includes December 31 of the last year of the
21 carryover period. Any decision on how part of the credit is applied shall
22 not limit how the remaining credit could be applied under this section.

23 (b) The taxpayer may use the credit provided in subsection (4) of
24 section 77-6831 (i) to reduce the taxpayer's income tax withholding
25 employer or payor tax liability under section 77-2756 or 77-2757, to the
26 extent such liability is attributable to the number of new employees

1 employed at the qualified location or locations, excluding any wages in
2 excess of one million dollars paid to any one employee during the year or
3 (ii) to reduce a qualified employee leasing company's income tax
4 withholding employer or payor tax liability under section 77-2756 or
5 77-2757, when the taxpayer is the client-lessee of such company, to the
6 extent such liability is attributable to the number of new employees
7 performing services for such client-lessee at the qualified location or
8 locations, excluding any wages in excess of one million dollars paid to
9 any one employee during the year. To the extent of the credit used, such
10 withholding shall not constitute public funds or state tax revenue and
11 shall not constitute a trust fund or be owned by the state. The use by
12 the taxpayer or the qualified employee leasing company of the credit
13 shall not change the amount that otherwise would be reported by the
14 taxpayer, or such qualified employee leasing company, to the employee
15 under section 77-2754 as income tax withheld and shall not reduce the
16 amount that otherwise would be allowed by the state as a refundable
17 credit on an employee's income tax return as income tax withheld under
18 section 77-2755. The amount of credits used against income tax
19 withholding shall not exceed the withholding attributable to the number
20 of new employees employed at the qualified location or locations or, for
21 a qualified employee leasing company, the number of new employees
22 performing services for the applicable client-lessee at the qualified
23 location or locations, excluding any wages in excess of one million
24 dollars paid to any one employee during the year. If the amount of credit
25 used by the taxpayer or the qualified employee leasing company against
26 income tax withholding exceeds such amount, the excess withholding shall
27 be returned to the Department of Revenue in the manner provided in
28 section 77-2756, such excess amount returned shall be considered unused,
29 and the amount of unused credits may be used as otherwise permitted in
30 this section or shall carry over to the extent authorized in subdivision
31 (1)(g) of this section.

1 (c) Credits may be used to obtain a refund of sales and use taxes
2 under the Local Option Revenue Act, the Nebraska Revenue Act of 1967, the
3 Qualified Judgment Payment Act, and sections 13-319, 13-324, and 13-2813
4 that are not subject to direct refund under section 77-6831 and that are
5 paid on purchases, including rentals, for use at a qualified location.

6 (d) The credits provided in subsections (4) and (5) of section
7 77-6831 may be used to repay a loan for job training or infrastructure
8 development as provided in section 77-6841.

9 (e) Credits may be used to obtain a payment from the state equal to
10 the amount which the taxpayer demonstrates to the director was paid by
11 the taxpayer after the date of the complete application for job training
12 and talent recruitment of employees who qualify in the number of new
13 employees, to the extent that proceeds from a loan described in section
14 77-6841 were not used to make such payments. For purposes of this
15 subdivision:

16 (i) Job training means training for a prospective or new employee
17 that is provided after the date of the complete application by a Nebraska
18 nonprofit college or university, a Nebraska public or private secondary
19 school, a Nebraska educational service unit, or a company that is not a
20 member of the taxpayer's unitary group or a related person to the
21 taxpayer; and

22 (ii) Talent recruitment means talent recruitment activities that
23 result in a newly recruited employee who is hired by the taxpayer after
24 the date of the complete application and who is paid compensation during
25 the year of hire at a rate equal to at least one hundred percent of the
26 Nebraska statewide average hourly wage for the year of application,
27 including marketing, relocation expenses, and search-firm fees. Talent
28 recruitment payments that may be reimbursed include, without limitation,
29 payment by the taxpayer, without repayment by the employee, of an
30 employee's student loans, an employee's tuition, and an employee's
31 downpayment on a primary residence in Nebraska. Talent recruitment

1 payments that may be reimbursed shall not include payments for the
2 recruitment of a person who constitutes a related person to the taxpayer
3 when the taxpayer is an individual or recruitment of a person who
4 constitutes a related person to an owner of the taxpayer when the
5 taxpayer is a partnership, a limited liability company, or a subchapter S
6 corporation.

7 (f) The credits provided in subsections (4) and (5) of section
8 77-6831 may be used to obtain a payment from the state equal to the
9 amount which the taxpayer demonstrates to the director was paid for
10 taxpayer-sponsored child care at the qualified location or locations
11 during the performance period and the carryover period.

12 (g) Credits may be carried over until fully utilized through the end
13 of the carryover period.

14 (h) A taxpayer that is also a Nebraska-based covered entity as
15 defined in 15 U.S.C. 4651 that qualifies under the Creating Helpful
16 Incentives to Produce Semiconductors (CHIPS) for America Act, Public Law
17 116-283, may use credits to obtain a payment from the state equal to the
18 amount which the taxpayer demonstrates to the director was paid by the
19 taxpayer after the date of the complete application to repay the
20 principal or interest on revenue bonds issued by an inland port authority
21 pursuant to section 13-3308.

22 (2)(a) No refund claims shall be filed until after the required
23 levels of employment and investment have been met.

24 (b) Refund claims shall be filed no more than once each quarter for
25 refunds under the Imagine Nebraska Act, except that any claim for a
26 refund in excess of twenty-five thousand dollars may be filed at any
27 time.

28 (c) Refund claims for materials purchased by a purchasing agent
29 shall include:

30 (i) A copy of the purchasing agent appointment;

31 (ii) The contract price; and

1 (iii)(A) For refunds under subdivision (2)(a)(iii) or (2)(a)(v) of
2 section 77-6831, a certification by the contractor or repairperson of the
3 percentage of the materials incorporated into or annexed to the qualified
4 location on which sales and use taxes were paid to Nebraska after
5 appointment as purchasing agent; or

6 (B) For refunds under subdivision (2)(a)(iv) of section 77-6831, a
7 certification by the contractor or repairperson of the percentage of the
8 contract price that represents the cost of materials annexed to the
9 qualified location and the percentage of the materials annexed to the
10 qualified location on which sales and use taxes were paid to Nebraska
11 after appointment as purchasing agent.

12 (d) All refund claims shall be filed, processed, and allowed as any
13 other claim under section 77-2708, except that the amounts allowed to be
14 refunded under the ImagiNE Nebraska Act shall be deemed to be
15 overpayments and shall be refunded notwithstanding any limitation in
16 subdivision (2)(a) of section 77-2708. The refund may be allowed if the
17 claim is filed within three years from the end of the year the required
18 levels of employment and investment are met or within the period set
19 forth in section 77-2708. Refunds shall be paid by the Tax Commissioner
20 within one hundred eighty days after receipt of the refund claim. Such
21 payments shall be subject to later recovery by the Tax Commissioner upon
22 audit.

23 (e) If a claim for a refund of sales and use taxes under the Local
24 Option Revenue Act, the Qualified Judgment Payment Act, or sections
25 13-319, 13-324, and 13-2813 of more than twenty-five thousand dollars is
26 filed by June 15 of a given year, the refund shall be made on or after
27 November 15 of the same year. If such a claim is filed on or after June
28 16 of a given year, the refund shall not be made until on or after
29 November 15 of the following year. The Tax Commissioner shall notify the
30 affected city, village, county, or municipal county of the amount of
31 refund claims of sales and use taxes under the Local Option Revenue Act,

1 the Qualified Judgment Payment Act, or sections 13-319, 13-324, and
2 13-2813 that are in excess of twenty-five thousand dollars on or before
3 July 1 of the year before the claims will be paid under this section.

4 (f) For refunds of sales and use taxes under the Local Option
5 Revenue Act, the deductions made by the Tax Commissioner for such refunds
6 shall be delayed in accordance with section 77-27,144.

7 (g) Interest shall not be allowed on any taxes refunded under the
8 ImagiNE Nebraska Act.

9 (3) The appointment of purchasing agents shall be recognized for the
10 purpose of changing the status of a contractor or repairperson as the
11 ultimate consumer of tangible personal property purchased after the date
12 of the appointment which is physically incorporated into or annexed at a
13 qualified location and becomes the property of the owner of the
14 improvement to real estate or the taxpayer. The purchasing agent shall be
15 jointly liable for the payment of the sales and use tax on the purchases
16 with the owner of the property.

17 (4) The determination of whether the application is complete,
18 whether a location is a qualified location, and whether to approve the
19 application and sign the agreement shall be made by the director. All
20 other interpretations of the ImagiNE Nebraska Act shall be made by the
21 Tax Commissioner. The Commissioner of Labor shall provide the director
22 with such information as the Department of Labor regularly receives with
23 respect to the taxpayer which the director requests from the Commissioner
24 of Labor in order to fulfill the director's duties under the act. The
25 director shall use such information to achieve efficiency in the
26 administration of the act.

27 (5) Once the director and the taxpayer have signed the agreement
28 under section 77-6828, the taxpayer, and its owners or members where
29 applicable, may report and claim and shall receive all incentives allowed
30 by the ImagiNE Nebraska Act, subject to the base authority limitations
31 provided in section 77-6839, without waiting for a determination by the

1 director or the Tax Commissioner or other taxing authority that the
2 taxpayer has met the required employment and investment levels or
3 otherwise qualifies, has qualified, or continues to qualify for such
4 incentives, provided that the tax return or claim has been signed by an
5 owner, member, manager, or officer of the taxpayer who declares under
6 penalties of perjury that he or she has examined the tax return or claim,
7 including accompanying schedules and statements, and to the best of his
8 or her knowledge and belief (a) the tax return or claim is correct and
9 complete in all material respects, (b) payment of the claim has not been
10 previously made by the state to the taxpayer, and (c) with respect to
11 sales or use tax refund claims, the taxpayer has not claimed or received
12 a refund of such tax from a retailer. The payment or allowance of such a
13 claim shall not prevent the director or the Tax Commissioner or other
14 taxing authority from recovering such payment, exemption, or allowance,
15 within the normal period provided by law, subject to normal appeal rights
16 of a taxpayer, if the director or Tax Commissioner or other taxing
17 authority determines upon review or audit that the taxpayer did not
18 qualify for such incentive or exemption.

19 (6) An audit of employment and investment thresholds and incentive
20 amounts shall be made by the Tax Commissioner to the extent and in the
21 manner determined by the Tax Commissioner. Upon request by the director
22 or the Tax Commissioner, the Commissioner of Labor shall report to the
23 director and the Tax Commissioner the employment data regularly reported
24 to the Department of Labor relating to number of employees and wages paid
25 for each taxpayer. The director and Tax Commissioner, to the extent they
26 determine appropriate, shall use such information to achieve efficiency
27 in the administration of the Imagine Nebraska Act. The Tax Commissioner
28 may recover any refund or part thereof which is erroneously made and any
29 credit or part thereof which is erroneously allowed by issuing a
30 deficiency determination within three years from the date of refund or
31 credit or within the period otherwise allowed for issuing a deficiency

1 determination, whichever expires later. The director shall not enter into
2 an agreement with any taxpayer unless the taxpayer agrees to
3 electronically verify the work eligibility status of all newly hired
4 employees employed in Nebraska within ninety days after the date of hire.
5 For purposes of calculating any tax incentive under the act, the hours
6 worked and compensation paid to an employee who has not been
7 electronically verified or who is not eligible to work in Nebraska shall
8 be excluded.

9 (7) A determination by the director that a location is not a
10 qualified location or a determination by the Tax Commissioner that a
11 taxpayer has failed to meet or maintain the required levels of employment
12 or investment for incentives, exemptions, or recapture, or does not
13 otherwise qualify for incentives or exemptions, may be protested by the
14 taxpayer to the Tax Commissioner within sixty days after the mailing to
15 the taxpayer of the written notice of the proposed determination by the
16 director or the Tax Commissioner, as applicable. If the notice of
17 proposed determination is not protested in writing by the taxpayer within
18 the sixty-day period, the proposed determination is a final
19 determination. If the notice is protested, the Tax Commissioner, after a
20 formal hearing by the Tax Commissioner or by an independent hearing
21 officer appointed by the Tax Commissioner, if requested by the taxpayer
22 in such protest, shall issue a written order resolving such protest. The
23 written order of the Tax Commissioner resolving a protest may be appealed
24 to the district court of Lancaster County in accordance with the
25 Administrative Procedure Act within thirty days after the issuance of the
26 order.

27 Sec. 79. Section 77-6841, Revised Statutes Cumulative Supplement,
28 2022, is amended to read:

29 77-6841 (1) The Legislature finds that providing job training is
30 critical to the public purpose of attracting and retaining businesses and
31 that the growth of high-paying jobs in Nebraska is limited by an unmet

1 need for workforce training and infrastructure development. The
2 Legislature further finds that many communities in Nebraska lack the
3 infrastructure, including broadband access, necessary to provide high-
4 paying jobs for residents. The Legislature further finds that workforce
5 training and infrastructure development help businesses and improve the
6 quality of life for workers and communities in Nebraska. Because there is
7 a statewide benefit from workforce training and infrastructure
8 development, the Legislature intends to provide a revolving loan program
9 as a rational means to address these needs.

10 (2) The Department of Economic Development shall establish and
11 administer a revolving loan program for workforce training and
12 infrastructure development expenses to be incurred by applicants for
13 incentives under the Imagine Nebraska Act.

14 (3) The Imagine Nebraska Revolving Loan Fund is hereby created. The
15 fund shall receive money from transfers authorized by appropriations from
16 the Legislature, grants, private contributions, repayment of loans, and
17 all other sources. Any money in the fund available for investment shall
18 be invested by the state investment officer pursuant to the Nebraska
19 Capital Expansion Act and the Nebraska State Funds Investment Act. It is
20 the intent of the Legislature to transfer five million dollars from the
21 General Fund to the Imagine Nebraska Revolving Loan Fund for fiscal years
22 2022-23 and 2023-24 for purposes of carrying out the workforce training
23 and infrastructure development revolving loan program pursuant to the
24 Imagine Nebraska Act. It is the intent of the Legislature to appropriate
25 five million dollars for fiscal years 2022-23 and 2023-24 for purposes of
26 carrying out the workforce training and infrastructure development
27 revolving loan program pursuant to the Imagine Nebraska Act.

28 (4)(a) (4) The Department of Economic Development, as part of its
29 comprehensive business development strategy, shall administer the Imagine
30 Nebraska Revolving Loan Fund and may loan funds to applicants under the
31 Imagine Nebraska Act to secure new, high-paying jobs in Nebraska based on

1 the criteria established in sections 77-6842 and 77-6843. Loans made to
2 applicants under the Imagine Nebraska Act and interest on such loans may
3 be repaid using credits earned under the Imagine Nebraska Act. If that
4 occurs, the Department of Revenue shall certify the credit usage to the
5 State Treasurer, who shall, within thirty days, transfer the amount of
6 the credit used from the General Fund to the Imagine Nebraska Revolving
7 Loan Fund.

8 (b) (5) If a taxpayer with an agreement under the Imagine Nebraska
9 Act obtains a loan under this subsection ~~section~~ and fails to attain the
10 required minimum number of new employees, minimum compensation, and
11 minimum required cumulative investment necessary for that taxpayer to
12 earn a credit, the principal and interest of the loan shall be considered
13 an underpayment of tax and may be recovered by the Department of Revenue.

14 (c) (6) Whether repaid using credits or repaid directly by the
15 recipient of the loan, loans made from the Imagine Nebraska Revolving
16 Loan Fund shall be repaid with interest at the rate established in
17 section 45-102.

18 (5)(a) The Department of Economic Development shall award funds to
19 match any federal grant, loan, loan guarantee, or other financial
20 incentive for a project for which a Nebraska-based covered entity as
21 defined in 15 U.S.C. 4651 qualifies under the Creating Helpful Incentives
22 to Produce Semiconductors (CHIPS) for America Act, Public Law 116-283.
23 The amount of the award, when combined with all other eligible state
24 funds and incentives, shall not exceed twenty-five percent of the total
25 cost of the project. The department may waive any interest payments for
26 qualifying projects.

27 (b) The Department of Economic Development shall approve any
28 Nebraska-based covered entity that meets the eligibility requirements
29 under the Creating Helpful Incentives to Produce Semiconductors (CHIPS)
30 for America Act, Public Law 116-283, if the eligible project has a total
31 project cost in excess of fifty million dollars. The department shall

1 award funds under this subsection upon receipt by an application of an
2 award of federal or other funds. Fund sources include federal, local,
3 private, and charitable contributions.

4 (c) An applicant shall apply to the Department of Economic
5 Development for an award under this subsection. The applicant shall
6 certify the investment made by the United States Government.

7 (d) Of the total funds awarded under this subsection and consistent
8 with section 9902(a)(2)(B) of the Creating Helpful Incentives to Produce
9 Semiconductors (CHIPS) for America Act, Public Law 116-283, five-tenths
10 of one percent of the amount awarded under this subsection shall be
11 awarded to an educational institution for the purpose of assisting a
12 Nebraska-based covered entity with the obligations under the federal law
13 for domestic semiconductor workforce development.

14 (e) An applicant may use award funds received under this subsection
15 for:

16 (i) Public and private sector initiatives that will improve
17 Nebraska's ability to attract microelectronic enterprises, especially
18 those incentivized under the Creating Helpful Incentives to Produce
19 Semiconductors (CHIPS) for America Act, Public Law 116-283, by making
20 necessary investments to the semiconductor industry, including, but not
21 limited to, grants for the establishment of private sector entities for
22 such purposes within eligible economically disadvantaged areas in
23 Nebraska, as set forth in section 9902(a)(2)(B) of the Creating Helpful
24 Incentives to Produce Semiconductors (CHIPS) for America Act, Public Law
25 116-283; and

26 (ii) A community college located in a city of the metropolitan class
27 working in collaboration with private sector partners and any interested
28 university, college, other community college, and technical school
29 located in this state to support education expansion and curricula
30 development in order to meet the needs of the domestic semiconductor
31 workforce in Nebraska set forth in section 9902(a)(2)(B) of the Creating

1 Helpful Incentives to Produce Semiconductors (CHIPS) for America Act,
2 Public Law 116-283.

3 2. Correct the operative date and repealer sections so that the
4 sections added by this amendment become operative on their effective date
5 with the emergency clause.

6 3. Renumber the remaining sections and correct internal references
7 accordingly.