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LEGISLATURE OF NEBRASKA

ONE HUNDRED SEVENTH LEGISLATURE

SECOND SESSION

LEGISLATIVE BILL 817

Introduced by Linehan, 39.

Read first time January 06, 2022

Committee: Revenue

A BILL FOR AN ACT relating to revenue and taxation; to amend sections 77-376, 77-27,195, 77-4110, 77-4933, 77-5731, and 77-5807, Reissue Revised Statutes of Nebraska, sections 77-6811, 77-6831, 77-6832, 77-6837, and 77-6839, Revised Statutes Cumulative Supplement, 2020, and section 77-5907, Revised Statutes Supplement, 2021; to change provisions relating to the examination of financial records and certain reporting requirements; to change the ImagiNE Nebraska Act as prescribed; to harmonize provisions; to repeal the original sections; and to declare an emergency.

Be it enacted by the people of the State of Nebraska, Section 1. Section 77-376, Reissue Revised Statutes of Nebraska, is amended to read:

77-376 (1) The Tax Commissioner may examine or cause to be examined in his or her behalf, and make memoranda from, any of the financial records of state and local subdivisions, persons, and corporations subject to the tax laws of this state, including the social security numbers of employees of such state and local subdivisions, persons, and corporations. No information shall be released that is not so authorized by existing statutes. Unless otherwise prohibited by law, the Tax Commissioner may share the information examined with the taxing or law enforcement authorities of this state, other states, and the federal government.

(2) The audit and examination selection criteria and standards, the discovery techniques, the design of technological systems to detect fraud and inconsistencies, and all other techniques utilized by the Department of Revenue to discover fraud, misstatements, inconsistencies, underreporting, and tax avoidance shall be confidential information. The department may disclose this information to certain persons to further its enforcement activities and as provided under section 50-1213, but such limited disclosure shall not change the confidential nature of the information.

Sec. 2. Section 77-27,195, Reissue Revised Statutes of Nebraska, is amended to read:

77-27,195 (1) The Tax Commissioner shall prepare a report identifying the amount of investment in this state and the number of equivalent jobs created by each taxpayer claiming a credit pursuant to the Nebraska Advantage Rural Development Act. The report shall include the amount of credits claimed in the aggregate. The report shall be issued on or before October 31 ~~July 15~~ of each year for all credits allowed during the previous fiscal ~~calendar~~ year. The report shall be on a fiscal year, accrual basis that satisfies the requirements set by the

Governmental Accounting Standards Board. The Department of Revenue shall, on or before December 15 ~~September 1~~ of each year, appear at a joint hearing of the Appropriations Committee of the Legislature and the Revenue Committee of the Legislature and present the report. Any supplemental information requested by three or more committee members shall be presented within thirty days after the request.

(2) Beginning with applications filed on or after January 1, 2006, except for livestock modernization or expansion projects, the report shall provide information on project-specific total incentives used every two years for each approved project and shall disclose (a) the identity of the taxpayer, (b) the location of the project, and (c) the total credits used and refunds approved during the immediately preceding two years expressed as a single, aggregated total. The incentive information required to be reported under this subsection shall not be reported for the first year the taxpayer attains the required employment and investment thresholds. The information on first-year incentives used shall be combined with and reported as part of the second year. Thereafter, the information on incentives used for succeeding years shall be reported for each project every two years containing information on two years of credits used and refunds approved. The incentives used shall include incentives which have been approved by the Department of Revenue, but not necessarily received, during the previous two fiscal ~~calendar~~ years.

(3) For livestock modernization or expansion projects, the report shall disclose (a) the identity of the taxpayer, (b) the total credits used and refunds approved during the preceding fiscal ~~calendar~~ year, and (c) the location of the project.

(4) No information shall be provided in the report that is protected by state or federal confidentiality laws.

Sec. 3. Section 77-4110, Reissue Revised Statutes of Nebraska, is amended to read:

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77-4110 (1) The Tax Commissioner shall submit electronically an annual report to the Legislature no later than October 31 ~~July 15~~ of each year. The report shall be on a fiscal year, accrual basis that satisfies the requirements set by the Governmental Accounting Standards Board. The Department of Revenue shall, on or before December 15 ~~September 1~~ of each year, appear at a joint hearing of the Appropriations Committee of the Legislature and the Revenue Committee of the Legislature and present the report. Any supplemental information requested by three or more committee members shall be presented within thirty days after the request.

(2) The report shall list (a) the agreements which have been signed during the previous fiscal ~~calendar~~ year, (b) the agreements which are still in effect, (c) the identity of each taxpayer, and (d) the location of each project.

(3) The report shall also state by industry group (a) the specific incentive options applied for under the Employment and Investment Growth Act, (b) the refunds allowed on the investment, (c) the credits earned, (d) the credits used to reduce the corporate income tax and the credits used to reduce the individual income tax, (e) the credits used to obtain sales and use tax refunds, (f) the number of jobs created, (g) the total number of employees employed in the state by the taxpayer on the last day of the calendar quarter prior to the application date and the total number of employees employed in the state by the taxpayer on subsequent reporting dates, (h) the expansion of capital investment, (i) the estimated wage levels of jobs created subsequent to the application date, (j) the total number of qualified applicants, (k) the projected future state revenue gains and losses, (l) the sales tax refunds owed to the applicants, (m) the credits outstanding, and (n) the value of personal property exempted by class in each county.

(4) No information shall be provided in the report that is protected by state or federal confidentiality laws.

Sec. 4. Section 77-4933, Reissue Revised Statutes of Nebraska, is amended to read:

77-4933 (1) The Department of Revenue shall submit electronically an annual report to the Legislature no later than October 31 of ~~July 15~~ each year. The report shall be on a fiscal year, accrual basis that satisfies the requirements set by the Governmental Accounting Standards Board. The report shall list (a) the agreements which have been signed during the previous fiscal ~~calendar~~ year, (b) the agreements which are still in effect, (c) the identity of each company, and (d) the location of each project. The department shall, on or before December 15 ~~September 1~~ of each year, appear at a joint hearing of the Appropriations Committee of the Legislature and the Revenue Committee of the Legislature and present the report. Any supplemental information requested by three or more committee members shall be presented within thirty days after the request.

(2) The report shall also state by industry group (a) the amount of wage benefit credits allowed under the Quality Jobs Act, (b) the number of direct jobs created at the project, (c) the amount of direct capital investment under the act, (d) the estimated wage levels of jobs created by the companies at the projects, (e) the estimated indirect jobs and investment created on account of the projects, and (f) the projected future state and local revenue gains and losses from all revenue sources on account of the direct and indirect jobs and investment created on account of the project.

(3) No information shall be provided in the report that is protected by state or federal confidentiality laws.

Sec. 5. Section 77-5731, Reissue Revised Statutes of Nebraska, is amended to read:

77-5731 (1) The Tax Commissioner shall submit electronically an annual report to the Legislature no later than October 31 ~~July 15~~ of each year. The report shall be on a fiscal year, accrual basis that satisfies the requirements set by the Governmental Accounting Standards Board. The

Department of Revenue shall, on or before December 15 ~~September 1~~ of each year, appear at a joint hearing of the Appropriations Committee of the Legislature and the Revenue Committee of the Legislature and present the report. Any supplemental information requested by three or more committee members shall be presented within thirty days after the request.

(2) The report shall list (a) the agreements which have been signed during the previous year, (b) the agreements which are still in effect, (c) the identity of each taxpayer who is party to an agreement, and (d) the location of each project.

(3) The report shall also state, for taxpayers who are parties to agreements, by industry group (a) the specific incentive options applied for under the Nebraska Advantage Act, (b) the refunds allowed on the investment, (c) the credits earned, (d) the credits used to reduce the corporate income tax and the credits used to reduce the individual income tax, (e) the credits used to obtain sales and use tax refunds, (f) the credits used against withholding liability, (g) the number of jobs created under the act, (h) the expansion of capital investment, (i) the estimated wage levels of jobs created under the act subsequent to the application date, (j) the total number of qualified applicants, (k) the projected future state revenue gains and losses, (l) the sales tax refunds owed, (m) the credits outstanding under the act, (n) the value of personal property exempted by class in each county under the act, (o) the value of property for which payments equal to property taxes paid were allowed in each county, and (p) the total amount of the payments.

(4) In estimating the projected future state revenue gains and losses, the report shall detail the methodology utilized, state the economic multipliers and industry multipliers used to determine the amount of economic growth and positive tax revenue, describe the analysis used to determine the percentage of new jobs attributable to the Nebraska Advantage Act assumption, and identify limitations that are inherent in the analysis method.

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(5) The report shall provide an explanation of the audit and review processes of the department in approving and rejecting applications or the grant of incentives and in enforcing incentive recapture. The report shall also specify the median period of time between the date of application and the date the agreement is executed for all agreements executed by June 30 ~~December 31~~ of the current ~~prior~~ year.

(6) The report shall provide information on project-specific total incentives used every two years for each approved project. The report shall disclose (a) the identity of the taxpayer, (b) the location of the project, and (c) the total credits used and refunds approved during the immediately preceding two years expressed as a single, aggregated total. The incentive information required to be reported under this subsection shall not be reported for the first year the taxpayer attains the required employment and investment thresholds. The information on first-year incentives used shall be combined with and reported as part of the second year. Thereafter, the information on incentives used for succeeding years shall be reported for each project every two years containing information on two years of credits used and refunds approved. The incentives used shall include incentives which have been approved by the department, but not necessarily received, during the previous two years.

(7) The report shall include an executive summary which shows aggregate information for all projects for which the information on incentives used in subsection (6) of this section is reported as follows: (a) The total incentives used by all taxpayers for projects detailed in subsection (6) of this section during the previous two years; (b) the number of projects; (c) the new jobs at the project for which credits have been granted; (d) the average compensation paid employees in the state in the year of application and for the new jobs at the project; and (e) the total investment for which incentives were granted. The executive summary shall summarize the number of states which grant investment tax

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credits, job tax credits, sales and use tax refunds for qualified investment, and personal property tax exemptions and the investment and employment requirements under which they may be granted.

(8) No information shall be provided in the report that is protected by state or federal confidentiality laws.

Sec. 6. Section 77-5807, Reissue Revised Statutes of Nebraska, is amended to read:

77-5807 No later than October 31 of each year, ~~Beginning July 15, 2007, and each July 15 thereafter~~ the Tax Commissioner shall prepare a report stating the total amount of credits claimed on income tax returns or as refunds of sales and use tax during the previous fiscal ~~calendar~~ year. The report shall be on a fiscal year, accrual basis that satisfies the requirements set by the Governmental Accounting Standards Board. The Department of Revenue shall, on or before December 15 ~~September 1~~ of each year, appear at a joint hearing of the Appropriations Committee of the Legislature and the Revenue Committee of the Legislature and present the report. Any supplemental information requested by three or more committee members shall be presented within thirty days after the request. No information shall be provided in the report that is protected by state or federal confidentiality laws.

Sec. 7. Section 77-5907, Revised Statutes Supplement, 2021, is amended to read:

77-5907 (1) The Tax Commissioner shall prepare a report identifying the following aggregate amounts for the previous fiscal ~~calendar~~ year: (a) The amount of projected employment and investment anticipated by taxpayers receiving tentative tax credits and the tentative tax credits granted; (b) the actual amount of employment and investment made by taxpayers that were granted tentative tax credits in the previous fiscal ~~calendar~~ year; (c) the tax credits used; and (d) the tentative tax credits that expired. The report shall be issued on or before October 31 of each year ~~July 15, 2007, and each July 15 thereafter~~. The report shall be on a fiscal year, accrual basis that satisfies the requirements set by the Governmental Accounting Standards Board. The Department of Revenue shall, on or before December 15 ~~September 1~~ of each year, appear at a joint hearing of the Appropriations Committee of the Legislature and the Revenue Committee of the Legislature and present the report. Any supplemental information requested by three or more committee members shall be presented within thirty days after the request.

(2) Beginning with applications filed on or after August 28, 2021, the report shall provide information on project-specific total credits used every two years for each approved application and shall disclose (a) the identity of the taxpayer, (b) the location or locations where the taxpayer is earning credits, (c) the new investment or new employment that was actually produced by the taxpayer to earn credits, and (d) the total credits used during the immediately preceding two years, expressed as a single, aggregated total.

(3) No information shall be provided in the report that is protected by state or federal confidentiality laws.

Sec. 8. Section 77-6811, Revised Statutes Cumulative Supplement, 2020, is amended to read:

77-6811 Investment means the value of qualified property incorporated into or used at the qualified location or locations. For qualified property owned by the taxpayer, the value shall be the original cost of the property. Improvements to real estate qualify as investment even if the entire improvement is not finished or ready for use. The percentage of completion of the improvement determines the portion of the investment that has occurred for any given year. For qualified property rented by the taxpayer, the average net annual rent shall be multiplied by the number of years of the lease for which the taxpayer was originally bound, not to exceed ten years. The rental of land included in and incidental to the leasing of a building shall not be excluded from the computation. For purposes of this section, original cost means the amount

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required to be capitalized for depreciation, amortization, or other recovery under the Internal Revenue Code of 1986, as amended. Any amount, including the labor of the taxpayer, that is capitalized as a part of the cost of the qualified property or that is written off under section 179 of the Internal Revenue Code of 1986, as amended, shall be considered part of the original cost.

Sec. 9. Section 77-6831, Revised Statutes Cumulative Supplement, 2020, is amended to read:

77-6831 (1) A taxpayer shall be entitled to the sales and use tax incentives contained in subsection (2) of this section if the taxpayer:

(a) Attains a cumulative investment in qualified property of at least five million dollars and hires at least thirty new employees at the qualified location or locations before the end of the ramp-up period;

(b) Attains a cumulative investment in qualified property of at least two hundred fifty million dollars and hires at least two hundred fifty new employees at the qualified location or locations before the end of the ramp-up period; or

(c) Attains a cumulative investment in qualified property of at least fifty million dollars at the qualified location or locations before the end of the ramp-up period. To receive incentives under this subdivision, the taxpayer must meet the following conditions:

(i) The average compensation of the taxpayer's employees at the qualified location or locations for each year of the performance period must equal at least one hundred fifty percent of the Nebraska statewide average hourly wage for the year of application;

(ii) The taxpayer must offer to its employees who constitute full-time employees as defined and described in section 4980H of the Internal Revenue Code of 1986, as amended, and the regulations for such section, at the qualified location or locations for each year of the performance period, the opportunity to enroll in minimum essential coverage under an eligible employer-sponsored plan, as those terms are defined and described in section 5000A of the Internal Revenue Code of 1986, as amended, and the regulations for such section; and

(iii) The taxpayer must offer a sufficient package of benefits as described in subdivision (1)(j) of section 77-6828.

(2) A taxpayer meeting the requirements of subsection (1) of this section shall be entitled to the following sales and use tax incentives:

(a) A refund of all sales and use taxes paid under the Local Option Revenue Act, the Nebraska Revenue Act of 1967, the Qualified Judgment Payment Act, and sections 13-319, 13-324, and 13-2813 from the date of the complete application through the meeting of the required levels of employment and investment for all purchases, including rentals, of:

(i) Qualified property used at the qualified location or locations;

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

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

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

(v) Tangible personal property by a contractor or repairperson after appointment as a purchasing agent of the taxpayer when such property is both (A) incorporated into real estate at the qualified location or locations and (B) annexed to, but not incorporated into, real estate at the qualified location or locations. The refund shall be based on fifty percent of the contract price, excluding any land, as the cost of materials subject to the sales and use tax; and

(b) An exemption from all sales and use taxes under the Local Option Revenue Act, the Nebraska Revenue Act of 1967, the Qualified Judgment Payment Act, and sections 13-319, 13-324, and 13-2813 on the types of purchases, including rentals, listed in subdivision (a) of this subsection for such purchases, including rentals, occurring during each year of the performance period in which the taxpayer is at or above the required levels of employment and investment, except that the exemption shall be for the actual materials purchased with respect to subdivisions (2)(a)(iii), (iv), and (v) of this section. The Tax Commissioner shall issue such rules, regulations, certificates, and forms as are appropriate to implement the efficient use of this exemption.

(3)(a) Upon execution of the agreement, the taxpayer shall be issued a direct payment permit under section 77-2705.01, notwithstanding the three million dollars in purchases limitation in subsection (1) of section 77-2705.01, for each qualified location specified in the agreement, unless the taxpayer has opted out of this requirement in the agreement. For any taxpayer who is issued a direct payment permit, until such taxpayer makes the investment in qualified property and hires the new employees at the qualified location or locations as specified in subsection (1) of this section, the taxpayer must pay and remit any applicable sales and use taxes as required by the Tax Commissioner.

(b) If the taxpayer makes the investment in qualified property and hires the new employees at the qualified location or locations as specified in subsection (1) of this section, the taxpayer shall receive the sales tax refunds described in subdivision (2)(a) of this section. For any year in which the taxpayer is not at the required levels of

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employment and investment, the taxpayer shall report all sales and use taxes owed for the period on the taxpayer's ~~income~~ tax return~~ for the year~~.

(4) The taxpayer shall be entitled to one of the following credits for payment of wages to new employees:

(a)(i) If a taxpayer attains a cumulative investment in qualified property of at least one million dollars and hires at least ten new employees at the qualified location or locations before the end of the ramp-up period, the taxpayer shall be entitled to a credit equal to four percent times the average wage of new employees times the number of new employees. Wages in excess of one million dollars paid to any one employee during the year shall be excluded from the calculations under this subdivision;

(ii) If the taxpayer attains a cumulative investment in qualified property of at least one million dollars and hires at least ten new employees at the qualified location or locations before the end of the ramp-up period and the number of new employees and investment are at a qualified location in a county in Nebraska with a population of one hundred thousand or greater, and at which the majority of the business activities conducted are described in subdivision (1)(a) or (1)(n) of section 77-6818, the taxpayer shall be entitled to a credit equal to four percent times the average wage of new employees times the number of new employees. Wages in excess of one million dollars paid to any one employee during the year shall be excluded from the calculations under this subdivision; or

(iii) If the taxpayer attains a cumulative investment in qualified property of at least one million dollars and hires at least ten new employees at the qualified location or locations before the end of the ramp-up period and the number of new employees and investment are at a qualified location entirely within a county in Nebraska with a population of less than one hundred thousand, and at which the majority of the business activities conducted are described in subdivision (1)(a) or (1)(n) of section 77-6818, the taxpayer shall be entitled to a credit equal to six percent times the average wage of new employees times the number of new employees. For purposes of meeting the ten-employee requirement of this subdivision, the number of new employees shall be multiplied by two. Wages in excess of one million dollars paid to any one employee during the year shall be excluded from the calculations under this subdivision;

(b) If a taxpayer hires at least twenty new employees at the qualified location or locations before the end of the ramp-up period, the taxpayer shall be entitled to a credit equal to five percent times the average wage of new employees times the number of new employees if the average wage of the new employees equals at least one hundred percent of the Nebraska statewide average hourly wage for the year of application. The credit shall equal seven percent times the average wage of new employees times the number of new employees if the average wage of the new employees equals at least one hundred fifty percent of the Nebraska statewide average hourly wage for the year of application. The credit shall equal nine percent times the average wage of new employees times the number of new employees if the average wage of the new employees equals at least two hundred percent of the Nebraska statewide average hourly wage for the year of application. Wages in excess of one million dollars paid to any one employee during the year shall be excluded from the calculations under this subdivision;

(c) If a taxpayer attains a cumulative investment in qualified property of at least five million dollars and hires at least thirty new employees at the qualified location or locations before the end of the ramp-up period, the taxpayer shall be entitled to a credit equal to five percent times the average wage of new employees times the number of new employees if the average wage of the new employees equals at least one hundred percent of the Nebraska statewide average hourly wage for the year of application. The credit shall equal seven percent times the average wage of new employees times the number of new employees if the average wage of the new employees equals at least one hundred fifty percent of the Nebraska statewide average hourly wage for the year of application. The credit shall equal nine percent times the average wage of new employees times the number of new employees if the average wage of the new employees equals at least two hundred percent of the Nebraska statewide average hourly wage for the year of application. Wages in excess of one million dollars paid to any one employee during the year shall be excluded from the calculations under this subdivision;

(d) If a taxpayer attains a cumulative investment in qualified property of at least two hundred fifty million dollars and hires at least two hundred fifty new employees at the qualified location or locations before the end of the ramp-up period, the taxpayer shall be entitled to a credit equal to seven percent times the average wage of new employees times the number of new employees if the average wage of the new employees equals at least one hundred fifty percent of the Nebraska statewide average hourly wage for the year of application. The credit shall equal nine percent times the average wage of new employees times the number of new employees if the average wage of the new employees equals at least two hundred percent of the Nebraska statewide average hourly wage for the year of application. Wages in excess of one million dollars paid to any one employee during the year shall be excluded from the calculations under this subdivision; or

(e) If a taxpayer attains a cumulative investment in qualified property of at least two hundred fifty thousand dollars but less than one million dollars and hires at least five new employees at the qualified location or locations before the end of the ramp-up period and the number of new employees and investment are at a qualified location within an economic redevelopment area, the taxpayer shall be entitled to a credit equal to six percent times the average wage of new employees times the number of new employees if the average wage of the new employees equals

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at least seventy percent of the Nebraska statewide average hourly wage for the year of application. Wages in excess of one million dollars paid to any one employee during the year shall be excluded from the calculations under this subdivision. For purposes of this subdivision, economic redevelopment area means an area in which (i) the average rate of unemployment in the area during the period covered by the most recent federal decennial census or American Community Survey 5-Year Estimate is at least one hundred fifty percent of the average rate of unemployment in the state during the same period and (ii) the average poverty rate in the area exceeds twenty percent for the total federal census tract or tracts or federal census block group or block groups in the area.

(5) The taxpayer shall be entitled to one of the following credits for new investment:

(a)(i) If a taxpayer attains a cumulative investment in qualified property of at least one million dollars and hires at least ten new employees at the qualified location or locations before the end of the ramp-up period, the taxpayer shall be entitled to a credit equal to four percent of the investment made in qualified property at the qualified location or locations;

(ii) If the taxpayer attains a cumulative investment in qualified property of at least one million dollars and hires at least ten new employees at the qualified location or locations before the end of the ramp-up period and the number of new employees and investment are at a qualified location in a county in Nebraska with a population of one hundred thousand or greater, and at which the majority of the business activities conducted are described in subdivision (1)(a) or (1)(n) of section 77-6818, the taxpayer shall be entitled to a credit equal to four percent of the investment made in qualified property at the qualified location or locations unless the cumulative investment exceeds ten million dollars, in which case the taxpayer shall be entitled to a credit equal to seven percent of the investment made in qualified property at

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the qualified location or locations; or

(iii) If the taxpayer attains a cumulative investment in qualified property of at least one million dollars and hires at least ten new employees at the qualified location or locations before the end of the ramp-up period and the number of new employees and investment are at a qualified location entirely within a county in Nebraska with a population of less than one hundred thousand, and at which the majority of the business activities conducted are described in subdivision (1)(a) or (1)(n) of section 77-6818, the taxpayer shall be entitled to a credit equal to four percent of the investment made in qualified property at the qualified location or locations unless the cumulative investment exceeds ten million dollars, in which case the taxpayer shall be entitled to a credit equal to seven percent of the investment made in qualified property at the qualified location or locations. For purposes of meeting the ten-employee requirement of this subdivision, the number of new employees shall be multiplied by two;

(b) If a taxpayer attains a cumulative investment in qualified property of at least five million dollars and hires at least thirty new employees at the qualified location or locations before the end of the ramp-up period, the taxpayer shall be entitled to a credit equal to seven percent of the investment made in qualified property at the qualified location or locations;

(c) If a taxpayer attains a cumulative investment in qualified property of at least two hundred fifty million dollars and hires at least two hundred fifty new employees at the qualified location or locations before the end of the ramp-up period, the taxpayer shall be entitled to a credit equal to seven percent of the investment made in qualified property at the qualified location or locations; or

(d) If a taxpayer attains a cumulative investment in qualified property of at least two hundred fifty thousand dollars but less than one million dollars and hires at least five new employees at the qualified location or locations before the end of the ramp-up period and the number of new employees and investment are at a qualified location within an economic redevelopment area, the taxpayer shall be entitled to a credit equal to four percent of the investment made in qualified property at the qualified location or locations. For purposes of this subdivision, economic redevelopment area means an area in which (i) the average rate of unemployment in the area during the period covered by the most recent federal decennial census or American Community Survey 5-Year Estimate is at least one hundred fifty percent of the average rate of unemployment in the state during the same period and (ii) the average poverty rate in the area exceeds twenty percent for the total federal census tract or tracts or federal census block group or block groups in the area.

(6)(a) The credit percentages prescribed in subdivisions (4)(a), (b), (c), and (d) and subdivisions (5)(a), (b), and (c) of this section shall be increased by one percentage point for wages paid and investments made at qualified locations in an extremely blighted area. For purposes of this subdivision, extremely blighted area means an area which, before the end of the ramp-up period, has been declared an extremely blighted area under section 18-2101.02.

(b) The credit percentages prescribed in subsections (4) and (5) of this section shall be increased by one percentage point if the taxpayer:

(i) Is a benefit corporation as defined in section 21-403 and has been such a corporation for at least one year prior to submitting an application under the ImagiNE Nebraska Act; and

(ii) Remains a benefit corporation as defined in section 21-403 for the duration of the taxpayer's agreement under the ImagiNE Nebraska Act.

(c) A taxpayer may, if qualified, receive one or both of the increases provided in this subsection.

(7)(a) The credits prescribed in subsections (4) and (5) of this section shall be allowable for wages paid and investments made during each year of the performance period that the taxpayer is at or above the

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required levels of employment and investment.

(b) The credits prescribed in subsection (5) of this section shall also be allowable during the first year of the performance period for investment in qualified property at the qualified location or locations after the date of the complete application and before the beginning of the performance period.

(8)(a) Property described in subdivision (8)(c) of this section used at the qualified location or locations, whether purchased or leased, and placed in service by the taxpayer after the date of the complete application, shall constitute separate classes of property and are eligible for exemption under the conditions and for the time periods provided in subdivision (8)(b) of this section.

(b) A taxpayer shall receive the exemption of property in subdivision (8)(c) of this section if the taxpayer attains one of the following employment and investment levels: (i) Cumulative investment in qualified property of at least five million dollars and the hiring of at least thirty new employees at the qualified location or locations before the end of the ramp-up period; (ii) cumulative investment in qualified property of at least fifty million dollars at the qualified location or locations before the end of the ramp-up period, provided the average compensation of the taxpayer's employees at the qualified location or locations for the year in which such investment level was attained equals at least one hundred fifty percent of the Nebraska statewide average hourly wage for the year of application and the taxpayer offers to its employees who constitute full-time employees as defined and described in section 4980H of the Internal Revenue Code of 1986, as amended, and the regulations for such section, at the qualified location or locations for the year in which such investment level was attained, the opportunity to enroll in minimum essential coverage under an eligible employer-sponsored plan, as those terms are defined and described in section 5000A of the Internal Revenue Code of 1986, as amended, and the regulations for such section; or (iii) cumulative investment in qualified property of at least two hundred fifty million dollars and the hiring of at least two hundred fifty new employees at the qualified location or locations before the end of the ramp-up period. Such property shall be eligible for the exemption from the first January 1 following the end of the year during which the required levels were exceeded through the ninth December 31 after the first year property included in subdivision (8)(c) of this section qualifies for the exemption, except that for a taxpayer who has filed an application under NAICS code 518210 for Data Processing, Hosting, and Related Services and who files a separate sequential application for the same NAICS code for which the ramp-up period begins with the year immediately after the end of the previous project's performance period or a taxpayer who has a project qualifying under subdivision (1)(b)(ii) of section 77-5725 and who files a separate sequential application for NAICS code 518210 for Data Processing, Hosting, and Related Services for which the ramp-up period begins with the year immediately after the end of the previous project's entitlement period, such property described in subdivision (8)(c)(i) of this section shall be eligible for the exemption from the first January 1 following the placement in service of such property through the ninth December 31 after the year the first claim for exemption is approved.

(c) The following personal property used at the qualified location or locations, whether purchased or leased, and placed in service by the taxpayer after the date of the complete application shall constitute separate classes of personal property:

(i) All personal property that constitutes a data center if the taxpayer qualifies under subdivision (8)(b)(i) or (8)(b)(ii) of this section;

(ii) Business equipment that is located at a qualified location or locations and that is involved directly in the manufacture or processing of agricultural products if the taxpayer qualifies under subdivision (8) (b)(i) or (8)(b)(ii) of this section; or

(iii) All personal property if the taxpayer qualifies under subdivision (8)(b)(iii) of this section.

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

(9) The taxpayer shall, on or before the receipt or use of any incentives under this section, pay to the director a fee of one-half percent of such incentives, except for the exemption on personal property, for administering the ImagiNE Nebraska Act, except that the fee on any sales tax exemption may be paid by the taxpayer with the filing of its sales and use tax return. Such fee may be paid by direct payment to the director or through withholding of available refunds. A credit shall be allowed against such fee for the amount of the fee paid with the application. All fees collected under this subsection shall be remitted to the State Treasurer for credit to the ImagiNE Nebraska Cash Fund, which fund is hereby created. The fund shall consist of fees credited under this subsection and any other money appropriated to the fund by the Legislature. The fund shall be administered by the Department of Economic Development and shall be used for administration of the ImagiNE Nebraska

Act. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Sec. 10. Section 77-6832, Revised Statutes Cumulative Supplement, 2020, is amended to read:

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

(b) The taxpayer may use the credit provided in subsection (4) of section 77-6831 (i) to reduce the taxpayer's income tax withholding employer or payor tax liability under section 77-2756 or 77-2757, ~~or to reduce a qualified employee leasing company's income tax withholding employer or payor tax liability under such sections, when the taxpayer is the client-lessee of such company,~~ to the extent such liability is attributable to the number of new employees employed at the qualified

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location or locations, excluding any wages in excess of one million dollars paid to any one employee during the year or (ii) to reduce a qualified employee leasing company's income tax withholding employer or payor tax liability under section 77-2756 or 77-2757, when the taxpayer is the client-lessee of such company, to the extent such liability is attributable to the number of new employees performing services for such client-lessee at the qualified location or locations, excluding any wages in excess of one million dollars paid to any one employee during the year. To the extent of the credit used, such withholding shall not constitute public funds or state tax revenue and shall not constitute a trust fund or be owned by the state. The use by the taxpayer or the qualified employee leasing company of the credit shall not change the amount that otherwise would be reported by the taxpayer, or such qualified employee leasing company, to the employee under section 77-2754 as income tax withheld and shall not reduce the amount that otherwise would be allowed by the state as a refundable credit on an employee's income tax return as income tax withheld under section 77-2755. The amount of credits used against income tax withholding shall not exceed the withholding attributable to the number of new employees employed at the qualified location or locations or, for a qualified employee leasing company, the number of new employees performing services for the applicable client-lessee at the qualified location or locations, excluding any wages in excess of one million dollars paid to any one employee during the year. If the amount of credit used by the taxpayer or the qualified employee leasing company against income tax withholding exceeds such amount, the excess withholding shall be returned to the Department of Revenue in the manner provided in section 77-2756, such excess amount returned shall be considered unused, and the amount of unused credits may be used as otherwise permitted in this section or shall carry over to the extent authorized in subdivision (1)(g) of this section.

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

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

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

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

(ii) Talent recruitment means talent recruitment activities that result in a newly recruited employee who is hired by the taxpayer after the date of the complete application and who is paid compensation during the year of hire at a rate equal to at least one hundred percent of the Nebraska statewide average hourly wage for the year of application, including marketing, relocation expenses, and search-firm fees. Talent recruitment payments that may be reimbursed include, without limitation, payment by the taxpayer, without repayment by the employee, of an employee's student loans, an employee's tuition, and an employee's downpayment on a primary residence in Nebraska. Talent recruitment payments that may be reimbursed shall not include payments for the recruitment of a person who constitutes a related person to the taxpayer when the taxpayer is an individual or recruitment of a person who constitutes a related person to an owner of the taxpayer when the taxpayer is a partnership, a limited liability company, or a subchapter S corporation.

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

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

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

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

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

(i) A copy of the purchasing agent appointment;

(ii) The contract price; and

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

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

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

(e) If a claim for a refund of sales and use taxes under the Local Option Revenue Act, the Qualified Judgment Payment Act, or sections 13-319, 13-324, and 13-2813 of more than twenty-five thousand dollars is filed by June 15 of a given year, the refund shall be made on or after November 15 of the same year. If such a claim is filed on or after June 16 of a given year, the refund shall not be made until on or after November 15 of the following year. The Tax Commissioner shall notify the affected city, village, county, or municipal county of the amount of refund claims of sales and use taxes under the Local Option Revenue Act, the Qualified Judgment Payment Act, or sections 13-319, 13-324, and 13-2813 that are in excess of twenty-five thousand dollars on or before July 1 of the year before the claims will be paid under this section.

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

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

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

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

(5) Once the director and the taxpayer have signed the agreement under section 77-6828, the taxpayer, and its owners or members where applicable, may report and claim and shall receive all incentives allowed by the ImagiNE Nebraska Act, subject to the base authority limitations provided in section 77-6839, without waiting for a determination by the director or the Tax Commissioner or other taxing authority that the taxpayer has met the required employment and investment levels or otherwise qualifies, has qualified, or continues to qualify for such incentives, provided that the tax return or claim has been signed by an owner, member, manager, or officer of the taxpayer who declares under penalties of perjury that he or she has examined the tax return or claim, including accompanying schedules and statements, and to the best of his or her knowledge and belief (a) the tax return or claim is correct and

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complete in all material respects, (b) payment of the claim has not been previously made by the state to the taxpayer, and (c) with respect to sales or use tax refund claims, the taxpayer has not claimed or received a refund of such tax from a retailer. The payment or allowance of such a claim shall not prevent the director or the Tax Commissioner or other taxing authority from recovering such payment, exemption, or allowance, within the normal period provided by law, subject to normal appeal rights of a taxpayer, if the director or Tax Commissioner or other taxing authority determines upon review or audit that the taxpayer did not qualify for such incentive or exemption.

(6) An audit of employment and investment thresholds and incentive amounts shall be made by the Tax Commissioner to the extent and in the manner determined by the Tax Commissioner. Upon request by the director or the Tax Commissioner, the Commissioner of Labor shall report to the director and the Tax Commissioner the employment data regularly reported to the Department of Labor relating to number of employees and wages paid for each taxpayer. The director and Tax Commissioner, to the extent they determine appropriate, shall use such information to achieve efficiency in the administration of the ImagiNE Nebraska Act. The Tax Commissioner may recover any refund or part thereof which is erroneously made and any credit or part thereof which is erroneously allowed by issuing a deficiency determination within three years from the date of refund or credit or within the period otherwise allowed for issuing a deficiency determination, whichever expires later. The director shall not enter into an agreement with any taxpayer unless the taxpayer agrees to electronically verify the work eligibility status of all newly hired employees employed in Nebraska within ninety days after the date of hire. For purposes of calculating any tax incentive under the act, the hours worked and compensation paid to an employee who has not been electronically verified or who is not eligible to work in Nebraska shall be excluded.

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

Sec. 11. Section 77-6837, Revised Statutes Cumulative Supplement, 2020, is amended to read:

77-6837 (1) Beginning in 2021, the director and the Tax Commissioner shall jointly submit electronically an annual report for the previous fiscal year to the Legislature no later than October 31 of each year. The report shall be on a fiscal year, accrual basis that satisfies the requirements set by the Governmental Accounting Standards Board. The Department of Economic Development and the Department of Revenue shall together, on or before December 15 of each year, appear at a joint hearing of the Appropriations Committee of the Legislature and the Revenue Committee of the Legislature and present the report. Any supplemental information requested by three or more committee members shall be presented within thirty days after the request.

(2) The report shall list (a) the agreements which have been signed during the previous year, (b) the agreements which are still in effect, (c) the identity of each taxpayer who is party to an agreement, and (d) the qualified location or locations.

(3) The report shall also state, for taxpayers who are parties to agreements, by industry group (a) the specific incentive options applied for under the ImagiNE Nebraska Act, (b) the refunds and reductions in tax allowed on the investment, (c) the credits earned, (d) the credits used to reduce the corporate income tax and the credits used to reduce the individual income tax, (e) the credits used to obtain sales and use tax refunds, (f) the credits used against withholding liability, (g) the credits used for job training, (h) the credits used for infrastructure development, (i) the number of jobs created under the act, (j) the expansion of capital investment, (k) the estimated wage levels of jobs created under the act subsequent to the application date, (l) the total number of qualified applicants, (m) the projected future state revenue gains and losses, (n) the sales tax refunds owed, (o) the credits outstanding under the act, (p) the value of personal property exempted by class in each county under the act, (q) the total amount of the payments, (r) the amount of workforce training and infrastructure development loans issued, outstanding, repaid, and delinquent, and (s) the value of health coverage provided to employees at qualified locations during the year who are not base-year employees and who are paid the required compensation. The report shall include the estimate of the amount of sales and use tax refunds to be paid and tax credits to be used as were required for the October forecast under section 77-6839.

(4) In estimating the projected future state revenue gains and losses, the report shall detail the methodology utilized, state the economic multipliers and industry multipliers used to determine the amount of economic growth and positive tax revenue, describe the analysis used to determine the percentage of new jobs attributable to the ImagiNE

Nebraska Act, and identify limitations that are inherent in the analysis method.

(5) The report shall provide an explanation of the audit and review processes of the Department of Economic Development and the Department of Revenue, as applicable, in approving and rejecting applications or the grant of incentives and in enforcing incentive recapture. The report shall also specify the median period of time between the date of application and the date the agreement is executed for all agreements executed by June 30 of the current ~~December 31 of the prior~~ year.

(6) The report shall provide information on agreement-specific total incentives used every two years for each agreement. The report shall disclose (a) the identity of the taxpayer, (b) the qualified location or locations, and (c) the total credits used and refunds approved during the immediately preceding two years expressed as a single, aggregated total. The incentive information required to be reported under this subsection shall not be reported for the first year the taxpayer attains the required employment and investment thresholds. The information on first-year incentives used shall be combined with and reported as part of the second year. Thereafter, the information on incentives used for succeeding years shall be reported for each agreement every two years containing information on two years of credits used and refunds approved. The incentives used shall include incentives which have been approved by the director or Tax Commissioner, as applicable, but not necessarily received, during the previous two years.

(7) The report shall include an executive summary which shows aggregate information for all agreements for which the information on incentives used in subsection (6) of this section is reported as follows: (a) The total incentives used by all taxpayers for agreements detailed in subsection (6) of this section during the previous two years; (b) the number of agreements; (c) the new jobs at the qualified location or locations for which credits have been granted; (d) the average

compensation paid to employees in the state in the year of application and for the new jobs at the qualified location or locations; and (e) the total investment for which incentives were granted. The executive summary shall summarize the number of states which grant investment tax credits, job tax credits, sales and use tax refunds for qualified investment, and personal property tax exemptions and the investment and employment requirements under which they may be granted.

(8) No information shall be provided in the report or in supplemental information that is protected by state or federal confidentiality laws.

Sec. 12. Section 77-6839, Revised Statutes Cumulative Supplement, 2020, is amended to read:

77-6839 (1) The Department of Economic Development and the Department of Revenue shall jointly, on or before the fifteenth day of October and February of every year and the fifteenth day of April in odd-numbered years, make an estimate of the amount of sales and use tax refunds to be paid and tax credits to be used under the ImagiNE Nebraska Act during the fiscal years to be forecast under section 77-27,158. The estimate shall be based on the most recent data available, including pending and approved applications and updates thereof as are required by subdivision (1)(f) of section 77-6828. The estimate shall be forwarded to the Legislative Fiscal Analyst and the Nebraska Economic Forecasting Advisory Board and made a part of the advisory forecast required by section 77-27,158.

(2)(a) In addition to the estimates required under subsection (1) of this section, the Department of Economic Development shall, on or before the fifteenth day of October and February of every year, make an estimate of the amount of sales and use tax refunds to be paid and tax credits to be used under the ImagiNE Nebraska Act for each of the upcoming three calendar years and shall report such estimate to the Governor. The estimate shall be based on the most recent data available, including

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pending and approved applications and updates thereof as are required by subdivision (1)(f) of section 77-6828. If the estimate for any such calendar year exceeds the base authority:

(i) The Department of Economic Development shall prepare an analysis explaining why the estimate exceeds the base authority. The department shall include such analysis in the report it submits to the Governor under this subsection; and

(ii) The director shall not approve any additional applications under the ImagiNE Nebraska Act that would include refunds or credits in the calendar year in which the base authority is projected to be exceeded. Applications shall be considered in the order in which they are received. Any applications that are not approved because the base authority has been exceeded shall be placed on a wait list in the order in which they were received and shall be given first priority once applications may again be approved. <u>Applications on the wait list retain the same application date and base year as if they had been approved within the time set forth in section 77-6827.</u>

(b) For purposes of this section, base authority means the total amount of refunds and credits that may be approved in any calendar year. Notwithstanding any other provision of the ImagiNE Nebraska Act to the contrary, no refunds may be paid and no credits may be used in any calendar year in excess of the base authority for such calendar year. The base authority shall be equal to twenty-five million dollars for calendar years 2021 and 2022, one hundred million dollars for calendar years 2023 and 2024, and one hundred fifty million dollars for calendar year 2025. Beginning with calendar year 2026 and every three years thereafter, the director shall adjust the base authority to an amount equal to three percent of the actual General Fund net receipts for the most recent fiscal year for which such information is available. Any amount of base authority that is unused in a calendar year shall carry forward to the following calendar year and shall be added to the limit applicable to such following calendar year, except that in no case shall the base authority for any calendar year prior to 2026 exceed four hundred million dollars.

Sec. 13. Original sections 77-376, 77-27,195, 77-4110, 77-4933, 77-5731, and 77-5807, Reissue Revised Statutes of Nebraska, sections 77-6811, 77-6831, 77-6832, 77-6837, and 77-6839, Revised Statutes Cumulative Supplement, 2020, and section 77-5907, Revised Statutes Supplement, 2021, are repealed.

Sec. 14. Since an emergency exists, this act takes effect when passed and approved according to law.