

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

<b>ESTIMATE OF FISCAL IMPACT – STATE AGENCIES (See narrative for political subdivision estimates)</b>				
	<b>FY 2020-21</b>		<b>FY 2021-22</b>	
	<b>EXPENDITURES</b>	<b>REVENUE</b>	<b>EXPENDITURES</b>	<b>REVENUE</b>
GENERAL FUNDS	See below	See below	See below	See below
CASH FUNDS	See below	See below	See below	See below
FEDERAL FUNDS				
OTHER FUNDS				
TOTAL FUNDS	See below	See below	See below	See below

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

LB 1220 creates the High-Wage Jobs and Capital Investment Creation Fund, administered by the Tax Commissioner. The commissioner can receive money or other assets for credit to the Fund. Money in the Fund must be used for grants, loans, or economic assistance to entities that meet certain requirements. Money in the Fund does not lapse to the General Fund, and money can only be expended upon appropriation, an amount of which is not designated in LB 1202. Each approved entity will pay an annual fee of 0.5% of the entity's investment authority, which is credited to the Fund.

Eligible entities, beginning 180 days after appropriation and for 10 years thereafter, can apply for approval. Applications must include certain information and a \$10,000 fee. Approved entities must enter into an agreement with the Tax Commissioner. The Fund must not approve more than \$30,000,000 in investment authority in a calendar year. LB 1220 requires 25% of the Fund to be invested in counties with 150,000 inhabitants or less.

The bill provides for disbursements to approved entities, immediate repayment if an entity fails to meet requirements, and for entities to exit the program in certain circumstances. Entities can exit the program on or after the 6<sup>th</sup> anniversary of the closing date. Repayment by entities is 50% of the entity's investment authority, minus the product of (1) the number of new full-time high-wage jobs; and (2) the earned job factor. The earned job factor increases as the wage increases.

Approved entities must submit annual reports to the Tax Commissioner on or before the last day of February each year, and such report must contain certain information.

The Tax Commissioner must submit a report to the Legislature on or before April 1, 2021, and each April 1 thereafter, and such report must include certain information. The Tax Commissioner can adopt and promulgate rules and regulations to carry out the act.

**Revenue:**

LB 1220 does not include intent to appropriate a certain amount to the Fund or list a specific funding source. The amount of distributions would depend upon the amount of money deposited in the Fund. Absent another funding source, it is assumed that General Fund transfers would be the initial revenue source.

Repayment revenue deposited in the Fund would depend upon initial investments, the success of the investment entities, the numbers of new jobs, and the earned job factor applied to each entity. As a result, the timing and amount of repayment revenue cannot be estimated at this time.

**Expenditures:**

Because LB 1220 does not allow funds deposited in the High-Wage Jobs and Capital Investment Creation Fund to be used for administrative expenses, it is estimated that costs would come from the General Fund. The Department of Revenue estimates 1.0 FTE Revenue Tax Specialist Senior is necessary to implement the bill, for a total cost of \$89,300 in FY 20-21 and \$83,100 in FY 21-22. There is no basis to disagree with this estimate.

**State Agency Estimate**

State Agency Name: Department of Revenue		Date Due LFA: 2/21/2020				
Approved by: Tony Fulton		Phone: 471-5896				
Date Prepared: 2/21/2020						
<u>FY 2020-2021</u>		<u>FY 2021-2022</u>		<u>FY 2022-2023</u>		
<u>Expenditures</u>	<u>Revenue</u>	<u>Expenditures</u>	<u>Revenue</u>	<u>Expenditures</u>	<u>Revenue</u>	
General Funds	\$89,300	\$0	\$83,100	\$0	\$85,000	\$0
Cash Funds						
Federal Funds						
Other Funds						
<b>Total Funds</b>	<b>\$89,300</b>	<b>\$0</b>	<b>\$83,100</b>	<b>\$0</b>	<b>\$85,000</b>	<b>\$0</b>

LB 1220 creates the High-Wage Jobs and Capital Investment Creation Fund (Fund). The Tax Commissioner will administer the Fund, and may adopt and promulgate rules and regulations necessary to carry out LB 1220.

Beginning 180 days after the appropriation of State funds and until 10 years thereafter, the Tax Commissioner must accept applications for approval as a Fund entity. Applications must include:

- The total investment authority sought by the applicant;
- A copy of the license showing the applicant or one of its affiliates is a rural business investment company under 7 U.S.C. § 2009cc or a small business investment company under 15 U.S.C. § 681, including a certificate executed by an executive officer attesting that (i) such license remains in effect and is not revoked; and (ii) on the application’s submission date, at least one principal in a rural business investment company or small business investment company is and has been an officer or employee of the applicant or affiliate for at least four years.
- As of the application date, evidence that the applicant and its affiliates (a) have invested at least \$75 million in nonpublic companies located in U.S. counties with populations less than 50,000 inhabitants; and (2) have received equity investments from investors who are not affiliates of the applicant in an amount equal to at least \$75 million; and
- A nonrefundable application fee of \$10,000.

Investment authority means the amount stated on the certificate that certifies the Fund entity under Section 3 of LB 1220. The investment authority must consist of equal amounts of grants, loan, or other types of economic assistance under the Fund and private contributions. Private contributions means an investment of cash in a Fund entity to match dollar-for dollar the grants, loans, or other types of economic assistance up to the investment authority of the Fund entity. A fund entity’s private contributions must be composed of not less than 10% of equity investments. A fund entity means an approved entity that meets the following requirements:

- The entity is a rural business investment company under 7 U.S.C. § 2009cc or a small business investment company under 15 U.S.C. § 681, and
- As of the date of application, the entity and its affiliates have received equity investments from investors who are not affiliates of application in an amount equal to at least \$75 million.

Affiliate means an entity that directly or indirectly or through one or more intermediaries controls, is controlled by, or is under common control with another entity. An entity is controlled by another entity, if (a) the controlling entity holds, directly or indirectly, the majority voting or ownership interest in the controlled entity; or (b) has control over day-to-day operations of the controlled entity by contract or law.

The Fund cannot approve more than \$30 million in investment authority in a calendar year. If requests for investment authority received simultaneously would result in exceeding the annual limitation, the Tax Commissioner must proportionally allot the investment authority and grants, loans, or other economic assistance among the approved applications. Tax Commissioner must make a determination on the applications within 60

business days after receipt of an administratively complete application in the order the applications are received. Applications received on the same day are considered received simultaneously.

The Tax Commissioner may only deny an application for the following reasons:

- An applicant does not satisfy all the criteria described in Section 3 of LB 1220; or
- Tax Commissioner already approved the maximum amount of investment authority.

If an application is denied, the applicant may provide the Tax Commissioner with additional information within five days of the denial. The Tax Commissioner must review and reconsider the application and additional information within 30 days. Reconsidered applications retain the original dates of receipt for priority purposes.

On approval of the application, the Tax Commissioner must execute a written agreement setting forth the terms and conditions of the grants, loans, or other types of economic assistance. After receiving approval, a Fund entity must do the following:

- Collect private contributions equal to 50% of the investment authority within 60 days of approval; and
- Send the Tax Commissioner sufficient documentation proving that the requisite amounts of private contribution have been collected within 65 days after approval.

Failure to comply with the documentation requirements will cause the withdrawal of the approval and the Tax Commissioner will award the corresponding investment authority first to existing applicants who received a lower investment authority than requested, and then to new applicants.

If Tax Commissioner timely receives and approves the documentation, the Tax Commissioner must then disperse to the Fund entity the grants, loans, or other types of economic assistance within 21 business days of receiving the documentation. The date the Fund entity receives a grant, loan, or other type of economic assistance establishes the “closing date”.

Fund entities must comply with several provisions to avoid a demand of repayment by the Tax Commissioner before its certified exit from the program. Before demanding repayment, the Tax Commissioner must send a notice to the Fund entity of the reasons for the pending repayment. The Fund entity will have 90 days after the date that the notice was dispatched to correct any violation within the notice to the satisfaction of the Tax Commissioner and avoid repaying the grants, loans, or other types of economic assistance.

Under subdivision (1) of Section 4, the Tax Commissioner must demand the immediate repayment of the grants, loans, or other types of economic assistance issued from the Fund, if the Fund entity does any of the following before its certified exit from the program:

- (a) The Fund entity does not invest - (1) at least 40% of its investment authority in growth investments in Nebraska within one year after the closing date; (2) invest 80% of its investment authority in growth investments within two years after closing date; and (3) 100% of its investment authority within three years after the closing date. 100% of its investment authority must be invested in growth investments in qualified businesses with principal business operations located in qualified locations. A minimum of 25% of the investment authority must be invested in counties with fewer than 200,000 inhabitants.
- (b) After satisfying the applicable growth investment level subdivision (1) (a) of Section 4, the Fund entity fails to maintain the requisite levels until the sixth anniversary of the closing date. For purposes of this subdivision, an investment is maintained even if the investment is sold or repaid so long as the Fund entity

reinvests an amount equal to the capital returned or recovered by the Fund entity from the original investment, less any profits realized, in other growth investments in Nebraska within 12 months of receiving that capital. Amounts received by a Fund entity pursuant to periodic repayments will be treated as continually invested in growth investments if the amounts are reinvested in one or more growth investments by the end of the following calendar year. A Fund entity is not required to reinvest capital returned from growth investments after the fifth anniversary of the closing date, and those growth investments must be considered held continuously by the Fund entity through the sixth anniversary of the closing date;

- (c) Before exiting the program, the Fund entity makes a distribution or payment that results in the Fund entity having less than 100% of its investment authority invested in growth investments in Nebraska or available for investment in growth investments and held in cash and other marketable securities; or
- (d) The Fund entity makes a growth investment in a qualified business that directly or indirectly through an affiliate owns, has a right to acquire an ownership interest, make a loan to, or makes an investment in a Fund entity, an affiliate of a Fund entity, or an investor in a Fund entity. This section does not apply to investments in public-traded securities. For purposes of this subdivision, a Fund entity must not be considered an affiliate of a business solely because of its growth investment.

No more than \$5 million in growth investments in a qualified business—including growth investments in affiliates of the qualified business—will count toward the growth investments in subdivision (1)(a) and (b) of Section 4. In addition, 25% of the Fund must be invested in counties with 150,000 or less inhabitants.

Section 2 of LB 1220 provides definitions relevant to determining whether the Fund entity met the above requirements. Qualified business means an operating business that, at time of initial investment by a Fund entity, the business (a) has less than 150 employees, and (b)(i) is engaged in industries assigned a North American Industry Classification System code within sectors 11, 21, 23, 31 through 33, 42, 48, 49, 54 — except 541110 through 541219—56, 62, or 81; or (ii) if not engaged in these industries, the Tax Commissioner determines the investment will be beneficial to the qualified location and the economic growth of Nebraska. Qualified location means a location that meets at least one of the following criteria: (a) a census tract within Nebraska with a poverty rate of 20% or greater; (b) a census tract within Nebraska with a median family income of 80% or less of that area's median family income; (c) a designated opportunity zone within Nebraska; or (d) a Nebraska county with fewer than 200,000 inhabitants.

Principal business operations mean the operation of a business located at the place or places where at least 60% of its employees work, or where employees that are paid at least 60% of its payroll work. A business that has agreed to relocate or to hire new employees using the proceeds of a growth investment to establish its principal business operations in a qualified location in Nebraska must be considered to have its principal business operations in the new location if the business satisfies the requirements of this subdivision within 180 days after receiving the growth investment, unless the Tax Commissioner agrees to a later date. A business located in Nebraska that has agreed to hire new employees in a qualified location using proceeds of growth investment to establish its principal business operations in the qualified location if it hires the necessary employees within 180 days after receiving the growth investment or a later date, if agreed by the Tax Commissioner.

Several definitions in Section 2 relate to determining the amount of repayment. Repayment means an amount equal to 50% of a Fund entity's investment authority, minus an amount equal to the product of: (a) the number of new full-time high-wage employment positions reported to the Fund for each of the Fund entity's submitted annual reports, and (b) the appropriate earned job factor. New full-time high-wage employment means the quotient obtained by dividing the total number of hours for which employees were compensated for employment

over the prior 12-month period by 2,080, then subtracting the full-time high-wage employment positions at the qualified business on the date it received the initial growth investment for each year the investment is outstanding. The earned job factor means an amount equal to:

- (a) \$10,000 for factor 1 job with an hourly wage rate of at least 150% of the Nebraska minimum wage and which provides full health care, life insurance, and paid time off benefits;
- (b) \$20,000 for factor 2 jobs with an hourly wage rate of at least 200% of the Nebraska minimum wage and which provide full health care, life insurance, and paid time off benefits;
- (c) \$30,000 for factor 3 jobs with an hourly wage rate of at least 250% of the Nebraska minimum wage and which provide full health care, life insurance, and paid time off benefits; and
- (d) \$40,000 for factor 4 jobs with an hourly wage rate of at least 150% of the Nebraska minimum wage and which employ veterans, senior citizens, ex-criminal offenders, citizens with disabilities, or citizens concurrently enrolled in a Department of Health and Human Services assistance program and which provide full health care, life insurance, and paid time off benefits.

For the requisite benefits, LB 1220 defines health care as a health plan compliant with the federal Patient Protection and Affordable Care Act; life insurance as a policy of an amount equal to the annual salary of the employee upon the employee's death; and paid time off as a policy to provide paid time off for one week.

A Fund entity may no longer be subject to LB 1220 and may exit the program on or after the sixth anniversary of the closing date. The Tax Commissioner must respond to an application to exit within 30 days of receipt and include a calculation of any repayment amount due. No distributions, other than those permitted in subdivision (1) (b) of Section 4, may be made with respect to the equity interests of a Fund entity that exceed the sum of

- the amount of equity capital invested into the Fund entity with respect to the equity interests; and
- An amount equal to any projected increase in the federal or state tax liability of holders of those interests related to the ownership of the Fund entity until the entity has made payments to the Fund equal to the repayment amount.

The Fund entity must send annual reports to the Tax Commissioner on or before the last day of February each year until the Fund entity has exited the program. The report must provide documentation of the Fund entity's growth investments that include:

- A bank statement evidencing growth investments;
- The name, location, industry, and North American Industry Classification System code of each qualified business receiving a growth investment, including either the determination set forth in section four or evidence that the business was a qualified business at the time the growth investment was made;
- The number of new full-time high-wage employment positions and the corresponding earned job factor at the qualified business in this state that must not be less than zero;
- The number of full-time high-wage employment positions at the qualified business on the date the initial growth investment in this state was received; and
- Any other required information by the Tax Commissioner.

By the fifth business day of the third anniversary of the closing date, the Fund entity must submit a report to the Tax Commissioner evidencing its compliance with the investment requirements of LB 1220.

Within 60 days after receiving a Fund entity’s annual report, the Tax Commissioner must provide written confirmation to the Fund entity of the new full-time high-wage employment positions that the Fund entity has been credited with for that year.

On or before April 1, 2021 and each April 1 thereafter, the Tax Commissioner must electronically submit a report to the Legislature that includes:

- The name and number of Fund entities approved to participate in the program;
- The amount of investment authority awarded to each Fund entity;
- Any investments made by Fund entities, including the location of the investments; and
- Whether the Fund entities are in compliance with LB 1220.

The Tax Commissioner must charge a Fund entity an annual fee of 0.5% of the Fund entity’s investment authority. The initial annual fee is due and payable to the Tax Commissioner within one business day after receiving a grant, loan, or other type of economic assistance. After the initial annual fee, an annual fee is due and payable on or before the last day of February each year until after the Fund entity has exited the program. The Tax Commissioner must remit the collected fees to the State Treasurer for credit to the Fund.

The Tax Commissioner may receive money or other assets from any source for credit to the Fund; must direct the investment of the fund; and remit the money and other assets, along with any interest and earnings from the Fund investments to the State Treasurer for credit to the Fund. At the close of the fiscal year, money within the Fund will remain in the Fund and not lapse to the General Fund. Upon appropriation, the State Treasurer may only expend money from the Fund to make grants, loans, or other types of economic assistance to Fund entities in this state. Any grants, loans, or other types of economic assistance by the Fund will be considered subordinate to any third-party capital in the Fund, excluding the required 10% equity investment. Any money in the Fund available for investment will be invested by the state investment officer under the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

It is estimated that this bill will have no impact on General Fund revenues since the program does not involve the Revenue Act. There may be an increase in General Fund expenditures to the Fund through appropriation, however, the amount is indeterminable.

The Department of Revenue will require 1.0 FTE Revenue Tax Specialist Senior for the implementation of the bill.

The operative date for this bill is three months after adjournment.

<b>Major Objects of Expenditure</b>							
<u>Class Code</u>	<u>Classification Title</u>	<u>20-21 FTE</u>	<u>21-22 FTE</u>	<u>22-23 FTE</u>	<u>20-21 Expenditures</u>	<u>21-22 Expenditures</u>	<u>22-23 Expenditures</u>
A29622	Revenue Tax Specialist Senior	1.0	1.0	1.0	\$63,400	\$62,500	\$63,900
Benefits.....					\$20,900	\$20,600	\$20,100
Operating Costs.....							
Travel.....							
Capital Outlay.....					\$5,000	\$0	\$0
Capital Improvements.....							
<b>Total.....</b>					<b>\$89,300</b>	<b>\$83,100</b>	<b>\$85,000</b>