

Revised per General File Amendment

# FISCAL NOTE

LEGISLATIVE FISCAL ANALYST ESTIMATE

ESTIMATE OF FISCAL IMPACT – STATE AGENCIES (See narrative for political subdivision estimates)				
	FY 2025-26		FY 2026-27	
	EXPENDITURES	REVENUE	EXPENDITURES	REVENUE
GENERAL FUNDS				
CASH FUNDS				
FEDERAL FUNDS				
OTHER FUNDS				
TOTAL FUNDS				

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

LB 649 was amended by AM933 on General File. AM933 is a white-copy amendment. The details of LB 649, as amended, are discussed below.

The bill establishes the Defense Efforts Workforce Act.

Under the bill, if a qualified employer has entered into an agreement with the state pursuant to the Act, the qualified employer shall during each year of the performance period receive the wage credit approved by the Tax Commissioner in the manner provided in the Act.

The wage credit shall equal 5% of the total compensation paid by the qualified employer in the year to all qualified employees of the qualified employer in Nebraska. The wage credit earned for all qualified employers shall not exceed \$4 million dollars in any year. If two or more qualified employers qualify for benefits in any given year, the one with the earlier approval will be fully funded first.

The wage credits shall be allowed for each year in the performance period. Unused credits may carry over and be applied against future state withholdings.

The total amount all qualified employers may receive in credits pursuant to the Act shall not exceed \$40 million. If two or more qualified employers qualify for benefits, the one with the earlier approval will be fully funded first. This benefit is in addition to any benefits the qualified employer may otherwise qualify for under the ImagiNE Nebraska Act or may have qualified for previously under the Nebraska Advantage Act, the Employment and Investment Growth Act, or the Key Employer and Jobs Retention Act.

The qualified employer may use the wage credit to reduce the qualified employer's income tax withholding employer or payor tax liability under section 77-2756 or 77-2757. 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 qualified employer of the credit shall not change the amount that otherwise would be reported by the qualified employer 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.

In order for the qualified employer to be liable for the wage credit, the qualified employer shall file an application for an agreement with the Tax Commissioner. The application shall include a nonrefundable application fee of \$5,000 and shall be credited to the Nebraska Incentives Fund.

If the taxpayer fails to maintain the required level of employment and meet the wage requirements through the entire performance period, all or a portion of the wage credits shall be recaptured directly by the state from the taxpayer or shall be disallowed. In no event shall any wage credits be required to be paid back directly or indirectly by the employees. All such credits must be repaid by the taxpayer.

The wage credits allowed under the Act shall not be transferable except in the specified situations.

The Tax Commissioner may adopt and promulgate rules and regulations necessary or appropriate to carry out the purposes of the Act.

The Department of Revenue (DOR) shall submit electronically an annual report 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 DOR shall, 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 must be provided within 30 days after the request.

The bill becomes operative on July 1, 2027.

The DOR estimates a \$4 million General Fund revenue loss starting in FY29 and each subsequent fiscal year until the overall \$40 million limit is met.

The DOR estimates minimal costs to it to implement the bill.

There is no basis to disagree with these estimates.

### State Agency Estimate

State Agency Name: Department of Revenue				Date Due LFO:				
Approved by: James R. Kamm		Date Prepared: 04/28/2025		Phone: 471-5896				
	<b><u>FY 2025-2026</u></b>			<b><u>FY 2026-2027</u></b>			<b><u>FY 2027-2028</u></b>	
	<u>Expenditures</u>	<u>Revenue</u>		<u>Expenditures</u>	<u>Revenue</u>		<u>Expenditures</u>	<u>Revenue</u>
General Funds								
Cash Funds								
Federal Funds								
Other Funds								
Total Funds								

AM 933 strikes the original sections of LB 649 and adopts the Defense Efforts Workforce Act (Act). The purpose of the Act is to provide incentives to encourage employers to locate their workforce to this State to support military defense efforts and foster the growth of the workforce required to advance global defense communications and technologies.

The Act requires qualified employers to file an application with the Nebraska Department of Revenue (DOR) to be eligible for the wage credit allowed under the Act. The Act lists what is required for the application and requires payment of a \$5,000 nonrefundable application fee. The fee will be remitted to the State Treasurer for credit to the Nebraska Incentives Fund.

A complete application is considered a valid application on the date submitted, and is confidential except for the name of the taxpayer, number of qualified employees, and whether the application has been approved. The Tax Commissioner must determine whether to approve applications based on whether the application meets the definition of a qualified employer. In addition, an application may only be approved if it is consistent with the legislative purpose of the Act.

A qualified employer is a taxpayer that:

- Employs at least 10 full-time employees in Nebraska during the base year and at least the same number of full-time qualified employees as were employed in the prior year for each year of the performance period. Full-time employee means with respect to any month, an employee who is employed on average at least 30 hours of service per week. Qualified employee means a person employed by the taxpayer as (1) a full-time employee; (2) exclusively dedicated to supporting military defense efforts in Nebraska; and (3) paid wages at a rate equal to 150% of the Nebraska statewide average hourly wage.
- Pays wages for services rendered at a rate equal to at least 150% of the Nebraska statewide average hourly wage, as defined by the Act, in the base year and at a rate equal to at least 102% of the prior year wage level during each year of the performance period; and

### Major Objects of Expenditure

<u>Class Code</u>	<u>Classification Title</u>	<u>25-26 FTE</u>	<u>26-27 FTE</u>	<u>27-28 FTE</u>	<u>25-26 Expenditures</u>	<u>26-27 Expenditures</u>	<u>27-28 Expenditures</u>
Benefits.....							
Operating Costs.....							
Travel.....							
Capital Outlay.....							
Capital Improvements.....							
<b>Total.....</b>							

- Electronically verifies the work eligibility status of all new qualified employees employed in Nebraska prior to hiring during the entire performance period.

Taxpayer is defined as any person subject to sales and use taxes under the Nebraska Revenue Act of 1967 and subject to withholding under Neb. Rev. Stat. § 77-2753 and any entity that is or would otherwise be a member of the same unitary group, if incorporated, that is subject to such sales, use and withholding taxes. Taxpayer does not include political subdivisions or organizations exempt under section 501(a) of the IRC. For purposes of this section, political subdivision means any public corporation created for the benefit of a political subdivision and any group of political subdivisions forming a joint public agency, organized by interlocal agreement, or utilizing any other method of joint action.

The Tax Commissioner must notify the applicant in writing whether the application is approved or not. The Tax Commissioner must decide and mail the notice within 30 days after receiving the application, regardless of whether he or she approves or disapproves of the application, unless the time is extended by mutual written consent. If approved, the qualified employer and the State must enter into a written agreement that is executed on behalf of the Tax Commissioner. The Act details what the agreement will contain.

A qualified employer with an agreement will receive the wage credit during each year of the performance period. Performance period is the year of application plus the next nine years. Any unused credits may carry over and be applied against future State withholdings.

The wage credit equals 5% of the total compensation paid by the qualified employer in the year to all qualified employees of the qualified employer in Nebraska. The qualified employer may use the credit to reduce income tax withholding or payor tax liability under §§ 77-2756 or 77-5727. To the extent the credit is used, such withholding will not constitute public funds or state tax revenue and will not constitute a trust fund or be owned by the State. The use by the qualified employer of the credit will not change the amount that otherwise would be reported by the qualified employer to the employee under § 77-2754 as income tax withheld and will 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 § 77-2755.

The wage credit earned for all qualified employers must not exceed \$4 million dollars in any year. The year is defined as a calendar year. If two or more qualified employers qualify for benefits in any given year, the one with the earlier approval will be fully funded first. In addition, the total amount all qualified employers may receive in credits must not exceed \$40 million. If two or more qualified employers qualify for benefits, the one with the earlier approval will be fully funded first. This benefit is in addition to any benefits the qualified employer may otherwise qualify for under the ImagiNE Nebraska Act or may have qualified previously under the Nebraska Advantage Act, the Employment Investment Growth Act, or the Key Employer and Jobs Retention Act.

There is a recapture provision for failing to maintain the required level of employees and meeting the wage requirements throughout the performance period. In no event will any wage credits be required to be paid back directly by the employers. All such credits must be repaid by the taxpayer.

Wage credits are not transferable except in the following situations:

- Any credit allowable to a partnership; LLC; S corporation; cooperative, including a cooperative except under section 521 of the IRC; a limited cooperative association; or an estate or trust may be distributed to the partners, members, shareholders, patrons or beneficiaries in the same manner as income is distributed for use against their income tax liabilities, and any recapture required under the Act shall be deemed to be an underpayment of their income taxes. Any distributed credit is considered a credit used by the entity and the entity shall be liable for any repayment required by Section 16 of the Act; and

- Credits previously allowed and future credits may be transferred when an agreement is transferred in its entirety by sale or lease to another taxpayer or in an acquisition of assets qualifying under section 381 of the IRC.

Acquiring taxpayers are entitled to any unused credits and future credits and are liable for any recapture as of the date of the completed transfer notification. The Tax Commissioner may disclose information necessary to determine the future credits and liabilities of the acquiring taxpayer. If a taxpayer dies and there is a credit remaining after the filing of the final return, the personal representative will determine the distribution of the credit or any remaining carryover with the initial fiduciary return filed for the estate. The determination of the distribution of the credit may be changed only after obtaining the permission of the Tax Commissioner.

DOR must submit an annual report to the Legislature no later than October 31 of each year. The report must be on a fiscal year, accrual basis that satisfies the Governmental Accounting Standards Board. The report must list (a) agreements which have been signed during the previous calendar year; (b) the agreements which are still in effect; and (c) the identity of each taxpayer that is a party to an agreement. The report also must:

- Provide information on agreement-specific total credits used every two years for each agreement; and
- Disclose the identity of the taxpayer and the total credits used during the immediately preceding two years, expressed as a single, aggregated totals;

The information required to be reported does not include the first year the taxpayer maintains the required employment threshold. The information on first-year credits used will be combined with and reported as part of the second year. Thereafter, the information on credits used for succeeding years must be reported for each agreement every two years containing information on two years of credit used. No information that is protected by state or federal confidentiality laws will be provided in the report.

On or before December 15 of each year, the DOR must appear at a joint hearing of the Appropriations and Revenue Committees of the Legislature to present the report. Any supplemental information requested by three or more committee members must be provided by DOR within 30 days of the request.

The operative date for the Act is July 1, 2027.

**Fiscal Impact:**

The \$4 million annual credit cap is expected to be reached starting in FY28-29 and each subsequent fiscal year until the overall \$40 million limit is met.

It is estimated that there will be minimal costs to DOR to implement this bill.