

LEGISLATIVE BILL 829

Approved by the Governor February 27, 1995

Introduced by Withem, 14; Abboud, 12; Avery, 3; Brashear, 4; Brown, 6;
Jensen, 20; Lindsay, 9; Pirsch, 10; Wehrbein, 2; Preister, 5;
Maurstad, 30

AN ACT relating to revenue and taxation; to adopt the Quality Jobs Act; to provide a termination date; to provide an operative date; and to provide severability.

Be it enacted by the people of the State of Nebraska,

Section 1. This act shall be known and may be cited as the Quality Jobs Act.

Sec. 2. It is the policy of this state to make revisions in its statutory structure if this will encourage both new and existing businesses to relocate to and expand in Nebraska and to provide appropriate inducements to encourage them to do so if this will aid in the economic and population growth of the state and help create better jobs for the citizens of the State of Nebraska and if this can be done in a fiscally sound and effective manner.

Sec. 3. For purposes of the Quality Jobs Act, the definitions found in sections 4 to 26 of this act shall be used.

Sec. 4. Any term defined in the Nebraska Revenue Act of 1967 and used in the Quality Jobs Act has the same meaning in the Quality Jobs Act unless the context requires a different meaning.

Sec. 5. Agreement means the agreement between the company and the state.

Sec. 6. Base year means the year immediately preceding the year during which the application was submitted.

Sec. 7. Base-year employee means any individual who was employed in Nebraska and subject to the Nebraska income tax on compensation received from the company or its predecessors during the base year and who is employed at the project.

Sec. 8. Board means the Governor, the State Treasurer, and the chairperson of the Nebraska Investment Council.

Sec. 9. Company means any person subject to the sales and use taxes and either the income tax imposed by the Nebraska Revenue Act of 1967 or the franchise tax under sections 77-3801 to 77-3807, any corporation that is a member of the same unitary group which is subject to such taxes, and any partnership, limited liability company, subchapter S corporation, or joint venture when the partners, owners, shareholders, or members are subject to such taxes.

Sec. 10. Company training program means any program developed or operated by or for the benefit of the company which screens, trains, or educates recruits, potential employees, or actual employees of the company, or any combination thereof, in order to enable the recruits or employees to perform employment activities at the project and includes recruitment, screening, customized training, job-specific training, on-the-job training, and generalized training programs.

Sec. 11. Company workplace safety program means any program developed by or operated by or for the benefit of the workplace safety of employees employed at the project.

Sec. 12. Compensation means the wages and other payments subject to withholding for federal income tax purposes.

Sec. 13. Educational institution training program means any training program established by or operated by any public or private educational institution that provides training or education for recruits, potential employees, or actual employees of the company, or any combination thereof, with regard to employment or potential employment at the project.

Sec. 14. Employee means a person employed at the project.

Sec. 15. Employee benefit program means health and dental benefits, dependent care, life insurance, disability insurance, or relocation costs provided to or for the benefit of employees, which programs are qualified under the Internal Revenue Code of 1986, as amended.

Sec. 16. Entitlement period is ten years, meaning the year after which the required increases in employment and investment were met or exceeded and the next one hundred eighty months.

Sec. 17. Equivalent employees means the number of employees computed by dividing the total hours paid in a year by the product of forty times the number of weeks in a year.

Sec. 18. Investment means the value of qualified property incorporated into or used at the project after the date of the application. For qualified property owned by the company, the value is the original cost of the property. For qualified property rented by the company, the value is the average net annual rent multiplied by the number of years of the lease for which the company was originally bound, not to exceed ten years or the end of the third year after the entitlement period, whichever is earlier. The rental of land included in and incidental to the leasing of a building shall not be excluded from the computation.

Sec. 19. Number of new employees means the excess of the number of equivalent employees employed at the project during a year over the number of equivalent employees during the base year.

Sec. 20. Project means a project described in the Quality Jobs Act and approved by the board.

Sec. 21. Project year means any year or portion of a year during the entitlement period of the project.

Sec. 22. Qualified business means any business engaged in the activities listed in subdivisions (1) through (5) of this section or in the storage, warehousing, distribution, transportation, or sale of tangible personal property. Qualified business does not include any business activity in which eighty percent or more of the total sales are sales to the ultimate consumer of food prepared for immediate consumption or are sales to the ultimate consumer of tangible personal property which is not assembled, fabricated, manufactured, or processed by the company or used by the purchaser in any of the following activities:

(1) The conducting of research, development, or testing for scientific, agricultural, animal husbandry, food product, or industrial purposes;

(2) The performance of data processing, telecommunication, insurance, or financial services. Financial services, for purposes of this subdivision, shall only include financial services provided by any financial institution subject to tax under sections 77-3801 to 77-3807 or any person or entity licensed by the Department of Banking and Finance or the Securities and Exchange Commission;

(3) The assembly, fabrication, manufacture, or processing of tangible personal property;

(4) The administrative management of any activities, including headquarter facilities, relating to such activity; or

(5) Any combination of the activities listed in this section.

Sec. 23. Qualified property means any tangible property of the type subject to depreciation, amortization, or other recovery under the Internal Revenue Code of 1986, as amended, or the components of such property that will be located and used at the project. Qualified property does not include aircraft, barges, motor vehicles, railroad rolling stock, or watercraft or property that is rented by the qualified company to another person.

Sec. 24. Related persons means any corporations which are members of the same unitary group or any persons who are considered to be related persons under section 267(b) and (c) of the Internal Revenue Code of 1986, as amended, or section 707(b) of the code.

Sec. 25. Wage benefit credit means the withholding credit described in the Quality Jobs Act.

Sec. 26. Year means the taxable year of the company.

Sec. 27. (1) If a company has entered into an agreement with the state pursuant to section 28 of this act, employees who are employed at the project covered by the agreement, other than base-year employees, shall during each project year receive the wage benefit credit in the manner provided in the Quality Jobs Act.

(2) The wage benefit credit shall be paid or applied by the employee for company training programs, employee benefit programs, educational institution training programs, or company workplace safety programs, or any combination thereof, as designated by the employee or as agreed to by the company and employee.

(3) Except as provided in subsection (4) of this section, the wage benefit credit per employee shall be an amount equal to the Nebraska income tax withholding attributable to the employee's compensation for services rendered in connection with the project for the project year without regard to the credit calculation under subsection (6) of this section.

(4) The wage benefit credit total for the project per year shall not exceed five percent of the total compensation paid by the company in the year to all employees, other than base-year employees, for services rendered in connection with the project. If the total of the wage benefit credit exceeds five percent of the total compensation paid to all employees, other than

base-year employees, the withholding in excess of five percent of each employee's compensation shall be returned to the Department of Revenue in the manner provided in section 77-2756.

(5) The wage benefit credit shall be allowed for each project year.

(6) The wage benefit credit shall be withheld by the company from the employee's compensation in the normal manner provided by section 77-2753, except that the amount shall not be required to be paid over to the state under section 77-2756 and shall not constitute part of the trust fund or be owned by the state as provided in section 77-2757, but instead shall, to the extent of attributable tax liability, represent a credit in the calculation of each such employee's tax liability and shall be paid or applied for the programs in the manner that the company and employee have determined as allowed by the act. For purposes of the withholding reporting provisions of sections 77-2754 and 77-2756, the company shall report the wage benefit credit separately to the state and to the employee as a wage benefit credit. Each employee shall be allowed on his or her Nebraska income tax return a nonrefundable credit against the tax imposed by sections 77-2714 to 77-27,123 equal to the wage benefit credit not to exceed (a) his or her income tax liability minus (b) the amount that Nebraska income tax liability would be if the total compensation paid by the company in the taxable year were excluded from the employee's adjusted gross income. The calculation of this nonrefundable credit shall be included with the employee's tax return and reported as determined by the Department of Revenue. If any amount allowable as a wage benefit credit has been through error or otherwise improperly paid to the state, it shall be refunded to the person who paid it upon application for refund filed within three years after payment.

Sec. 28. (1) In order for the employee and company to be eligible for the wage benefit credit, the company shall file an application for an agreement with the board.

(2) The application shall contain:

(a) The exact name of the company and any related companies which will be included in the project;

(b) A statement describing, in detail, the nature of the company's business, including the products sold and respective markets;

(c) A detailed narrative that describes the proposed project, including how the company intends to attain and maintain the job and investment requirements;

(d) A request that the company be considered for approval under the Quality Jobs Act;

(e) If more than one location within this state is to be involved in the project, sufficient documentation to show that the employment and investment at the different locations are interdependent parts of the project plan;

(f) A copy of the corporate authorization for the project;

(g) A copy of the company's most recent financial report, federal income tax return, Nebraska income tax return, Nebraska reconciliation of income tax withheld, and Nebraska sales and use tax identification number;

(h) The number of base-year employees, the expected number of new employees, the expected timing of the hiring of the new employees, the anticipated timing and amounts of new investment in buildings and equipment, and the average salaries expected by category for the new employees to be employed at the project; and

(i) A five-thousand-dollar nonrefundable application fee payable to the Department of Revenue. The fee shall be remitted to the Quality Jobs Fund, which fund is created. 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.

(3) The application and all supporting information shall be confidential except for the name of the company, the location of the project, the amounts of increased employment and investment, the result of the net benefit calculations, and whether the application has been approved.

(4) The board shall determine whether to approve the company's application by majority vote based on its determination as to whether the project will sufficiently help enable the state to accomplish the purposes of the Quality Jobs Act. The board shall be governed by and shall take into consideration all of the following factors in making its determination:

(a) The timing, number, wage levels, employee benefit package, and types of new jobs to be created by the project;

(b) The type of industry in which the company and the project would be engaged;

(c) The timing, amount, and types of investment in qualified property to be made at the project; and

(d) Whether the board believes the project would occur in this state regardless of whether the application was approved.

(5) The board shall notify the company in writing as to whether it has approved or not approved the application. The board shall decide and mail such notice within thirty days after receipt of the application whether it approves or disapproves the application, unless such time is extended by mutual written consent of the board and the company.

(6) A project shall be considered eligible under the act and may be approved by the board only if the application defines a project consistent with the legislative purposes contained in section 2 of this act in one or more qualified business activities within this state that will result in (a) the investment in qualified property of at least fifty million dollars and the hiring of a number of new employees of at least five hundred or (b) the investment in qualified property of at least one hundred million dollars and the hiring of a number of new employees of at least two hundred fifty. The new investment and employment shall occur within five years, meaning by the end of the fourth year after the end of the year the application was filed, and shall be maintained for the entire entitlement period. These thresholds shall constitute the required levels of employment and investment for purposes of the act.

(7) If the project application is approved by the board, the company and the state shall enter into a written agreement, which shall be executed on behalf of the state by the Tax Commissioner. In the agreement the company shall agree to complete the project and the state shall designate the approved plans of the company as a project and, in consideration of the company's agreement, agree to allow the wage benefit credit as provided for in the act. The application, and all supporting documentation, to the extent approved, shall be considered a part of the agreement. The agreement shall contain such terms and conditions as the board shall specify in order to carry out the legislative purposes of the act. The agreement shall contain provisions to allow the Department of Revenue to verify that the required levels of employment have been attained and maintained.

(8) The address of the board shall be the address of the Department of Revenue.

Sec. 29. (1) If the company fails either to meet the required levels of employment or investment for the project by the end of the fourth year after the end of the year the application was filed for such project or to utilize such project in a qualified business at or above the required levels of employment and investment required in the Quality Jobs Act for the entire entitlement period, all or a portion of the wage benefit credit shall be recaptured directly by the state from the company or shall be disallowed. In no event shall any wage benefit credit be required to be paid back directly or indirectly by the employees, but instead shall be paid by the company.

(2) The recapture or disallowance shall be as follows:

(a) In the case of a company which has failed to meet the required levels within the required time period, all wage benefit credits shall be disallowed, and if any have been received, they shall be recaptured or paid by the company to the state; and

(b) In the case of a company which has failed to maintain the project at the required levels of employment and investment for the entire entitlement period: (i) No wage benefit credits shall be allowed, and if already allowed shall be recaptured, for the actual year or years in which the required levels of employment or investment were not maintained; (ii) for wage benefit credits allowed in prior years, one-tenth of the credits shall be recaptured from the company for each year the required levels of employment or investment were not maintained; and (iii) as to wage benefits credits for future years, one-tenth of the credits shall not be allowed for each year the required levels of employment or investment were not maintained in previous years.

(3) Any amounts required to be recaptured shall be deemed to be an underpayment of tax, shall be immediately due and payable, and shall constitute a lien on the assets of the company. When wage benefit credits were received in more than one year, the credits received in the most recent year shall be recovered first and then the credits received in earlier years up to the extent of the required recapture.

(4) Interest and penalties accrue as follows:

(a) In the case of a company which has failed to meet the required levels within the required time period, interest accrues from the time the withholding should have been returned to the state;

(b) In the case of a company which has failed to maintain the project at the required levels of employment and investment for the entire entitlement period, interest first accrues from the time of the due date for

the return for the year in which the company failed to maintain the required levels; and

(c) Penalties do not accrue until ninety days after the requirement for recapture or disallowance becomes known or should have become known to the company.

(5) The recapture or disallowance required by this section may be waived by the board if the board finds the failure to attain or maintain the required levels of employment or investment was caused by unavoidable circumstances such as an act of God or national emergency.

Sec. 30. A project covered by an agreement may be transferred in its entirety by sale or lease to another person or in an acquisition of assets qualifying under section 381 of the Internal Revenue Code of 1986, as amended. The acquiring persons shall be entitled to the same benefits as the original company and shall be subject to the same obligations, including recapture and disallowance, as the original company.

Sec. 31. The following transactions or activities shall not create any investment, result in an increase in the number of new employees, or create any wage benefit credits under the Quality Jobs Act except as specifically allowed by this section:

(1) The acquisition of a business located in this state which is continued by the company and which was operated in this state during the three hundred sixty-six days prior to the date of application or the date of acquisition, whichever is later. All of the employees of the acquired business during such period shall be considered base-year employees. Any investment in the acquisition of such business shall be considered as being made before the date of application;

(2) The moving of a business from one location in this state to another, which business was operated in this state during the three hundred sixty-six days prior to the date of application. All employees of the business during such three hundred sixty-six days shall be considered base-year employees;

(3) The purchase or lease of any property which was previously owned by the company or a related person. The first purchase by either the company or a related person shall be treated as investment if the item was first placed in service in this state after the date of the application;

(4) The renegotiation of any lease in existence on the date of application which does not materially change any of the terms of the lease, other than the expiration date, shall be presumed to be a transaction entered into for the purpose of generating benefits under the act and shall not be allowed in the computation of the meeting of any required levels of investment under the agreement;

(5) Any purchase or lease of property from a related person, except that the company will be allowed benefits under the act to which the related person would have been entitled on the purchase or lease of the property if the related person was considered the company; and

(6) Any transaction entered into primarily for the purpose of receiving benefits under the act which is without a business purpose and does not result in increased economic activity in this state.

Sec. 32. The Department of Revenue, in consultation with the Governor and the Department of Economic Development, shall adopt and promulgate all rules and regulations to carry out the purposes of the Quality Jobs Act.

Sec. 33. (1) The Department of Revenue shall submit an annual report to the Legislature no later than March 15 each year. The report shall list (a) the agreements which have been signed during the previous calendar year, (b) the agreements which are still in effect, (c) the identity of each company, and (d) the location of each project.

(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. 34. The Quality Jobs Act applies to applications filed, board actions taken, and agreements entered into on or after the operative date of this act.

Sec. 35. The Quality Jobs Act terminates on February 1, 1997, if no applications have been approved prior to such date. There shall be no project

applications filed on or after February 1, 2000, without further authorization of the Legislature, except that all project applications and all project agreements pending, approved, or entered into before such date shall continue in full force and effect.

Sec. 36. This act becomes operative on February 1, 1995.

Sec. 37. If any section in this act or any part of any section is declared invalid or unconstitutional, the declaration shall not affect the validity or constitutionality of the remaining portions.