

LEGISLATIVE BILL 939

Approved by the Governor March 11, 1998

Introduced by Brown, 6; Brashear, 4; Bruning, 3; Coordsen, 32; Dierks, 40; Hartnett, 45; Raikes, 25; Thompson, 14; Wehrbein, 2; Will, 8; Jensen, 20; Maurstad, 30; Schrock, 38

AN ACT relating to the Quality Jobs Act; to amend sections 77-4928, 77-4929, and 77-4934.01, Reissue Revised Statutes of Nebraska; to change investment and employment requirements; to harmonize provisions; to provide for applicability; and to repeal the original sections.

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

Section 1. Section 77-4928, Reissue Revised Statutes of Nebraska, is amended to read:

77-4928. (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 77-4902 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 ~~seven~~ years, meaning by the end of the fourth ~~sixth~~ 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. 2. Section 77-4929, Reissue Revised Statutes of Nebraska, is amended to read:

77-4929. (1) If the company fails either to meet the required levels of employment or investment for the project by the end of the fourth ~~sixth~~ 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. 3. Section 77-4934.01, Reissue Revised Statutes of Nebraska, is amended to read:

77-4934.01. Section 77-4927.01 and the changes made to sections 77-4901 and 77-4925 by Laws 1996, LB 1368, apply to any agreement entered into under the Quality Jobs Act after July 19, 1996.

The changes made to sections 77-4928 and 77-4929 by this legislative bill apply to all applications filed on or after January 1, 1998. For all applications filed prior to such date, the provisions of the Quality Jobs Act as they existed immediately prior to such date apply.

Sec. 4. Original sections 77-4928, 77-4929, and 77-4934.01, Reissue Revised Statutes of Nebraska, are repealed.