

AMENDMENTS TO LB 620

1 1. Strike original sections 30 and 33 and insert the
2 following new sections:

3 "Sec. 24. Qualified employee leasing company means a
4 company which places all employees of a client-lessee on its
5 payroll and leases such employees to the client-lessee on an
6 ongoing basis for a fee and, by written agreement between the
7 employee leasing company and a client-lessee, grants to the
8 client-lessee input into the hiring and firing of the employees.

9 Sec. 31. (1) A company which has signed an agreement
10 under section 34 of this act may receive, in lieu of any wage
11 benefit credit otherwise allowed by the Invest Nebraska Act, the
12 incentive provided in this section if the agreement is for a
13 project which will result in the investment in qualified property
14 of at least two hundred million dollars and the hiring of at least
15 five hundred new employees. Such two hundred million dollar
16 investment and hiring of at least five hundred new employees shall
17 be considered a required level of investment and employment for
18 this section and for the recapture of the incentives of this
19 section only.

20 (2) When the company has met the required levels of
21 employment and investment contained in this section, the company
22 shall be entitled to either the wage benefit credit provided in
23 section 29 of this act or an investment tax credit equal to fifteen
24 percent of the investment made in qualified property at the

1 project. The company shall be required to state which option it
2 will seek benefits under in the application for benefits under the
3 act.

4 (3) The investment tax credit prescribed in this section
5 shall be allowable for investments made during each year of the
6 entitlement period that the company is at or above the required
7 levels of employment and investment. The credit shall also be
8 allowable during the first year of the entitlement period for
9 investment in qualified property at the project after the date of
10 the application and before the required levels of employment and
11 investment were met.

12 (4) The investment tax credit prescribed in this section
13 shall be established by filing the forms required by the Tax
14 Commissioner with the income tax return for the year. The credits
15 may be used to reduce the company's Nebraska income tax liability.
16 The credits shall be applied in the order in which they were first
17 allowed. Any decision on how part of the credit is applied shall
18 not limit how the remaining credit could be applied under this
19 section. The credit may be carried over until fully utilized,
20 except that the credit may not be carried over more than eight
21 years after the end of the entitlement period. If a credit is
22 subsequently recaptured under section 35 of this act, the credit
23 shall be treated as if it had never been allowed.

24 (5) The investment tax credit shall not be transferable,
25 except that any credit to be taken against the income tax liability
26 of the company and allowable to a partnership, a limited liability
27 company, a subchapter S corporation, a cooperative, or an estate or

1 trust may be distributed to the partners, members, shareholders,
2 patrons, or beneficiaries in the same manner as income is
3 distributed for use against their income tax liabilities.

4 Sec. 34. (1) The board shall determine whether to
5 approve the company's application by majority vote based on its
6 determination as to whether the project will sufficiently help
7 enable the state to accomplish the purposes of the Invest Nebraska
8 Act. The board shall be governed by and shall take into
9 consideration all of the following factors in making its
10 determination:

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

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

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

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

19 (2) The weight given to each factor shall be determined
20 by each board member individually for each application. The
21 decision of the board shall be made in open meeting and is not
22 confidential.

23 (3) A project shall be considered eligible under the act
24 and may be approved by the board only if the application defines a
25 project consistent with the purposes contained in section 2 of this
26 act in one or more qualified business activities within this state
27 that will result in (a) the investment in qualified property of at

1 least twenty million dollars and the hiring of a number of new
2 employees of at least fifty. The investment and new employees for
3 such project shall count towards attaining and maintaining such
4 thresholds only if the qualified property is located in, and the
5 employee's principal place of employment for the company is located
6 in one or more Nebraska counties having a population of less than
7 one hundred thousand individuals as of the end of the base-year.
8 For this purpose, the population shall be conclusively determined
9 by the Department of Revenue, (b) the investment in qualified
10 property of at least fifty million dollars and the hiring of a
11 number of new employees of at least five hundred, (c) the
12 investment in qualified property of at least one hundred million
13 dollars and the hiring of a number of new employees of at least two
14 hundred fifty, or (d) the investment in qualified property of at
15 least two hundred million dollars and the hiring of a number of new
16 employees of at least five hundred.

17 (4) The board may approve as many projects as qualify
18 under subdivisions (3)(a), (b), and (c) of this section. The board
19 shall only approve one project that qualifies under subdivision
20 (3)(d) of this section for each calendar year that new applications
21 are made. The new investment and employment shall occur within
22 seven years, meaning by the end of the sixth year after the end of
23 the year the application was filed, and shall be maintained for the
24 entire entitlement period. These thresholds shall constitute the
25 required levels of employment and investment for purposes of the
26 act.

27 (5)(a) An individual, other than a base-year employee,

1 shall be considered an employee whose compensation is included in
2 the calculation of the wage benefit credit only if the compensation
3 paid by the company to such employee for the year is (i) for
4 companies qualifying under the twenty million dollar investment and
5 fifty new employee threshold under subdivision (3)(a) of this
6 section, at least one hundred percent of the Nebraska average
7 annual wage, (ii) for companies qualifying under the fifty million
8 dollar investment and five hundred new employee threshold under
9 subdivision (3)(b) of this section or the one hundred million
10 dollar investment and two hundred fifty new employee threshold
11 under subdivision (3)(c) of this section, at least one hundred ten
12 percent of the Nebraska average annual wage; and (iii) for the
13 companies applying under the two hundred million dollar investment
14 and five hundred new employee threshold of subdivision (3)(d) of
15 this section, at least one hundred twenty percent of the Nebraska
16 average annual wage.

17 (b) For the purposes of subdivision (a) of this
18 subsection, compensation paid by the company to such employee for
19 the year shall be the amount paid for the entire year for regular
20 hours worked, not including overtime, bonuses, or any other
21 irregular payments. If the employee works for less than a year,
22 the compensation paid will be annualized solely for the purpose of
23 comparison with the Nebraska average annual wage.

24 (6) If the project application is approved by the board,
25 the company and the state shall enter into a written agreement,
26 which shall be executed on behalf of the state by the Tax
27 Commissioner. In the agreement the company shall agree to complete

1 the project and the state shall designate the approved plans of the
2 company as a project and, in consideration of the company's
3 agreement, agree to allow the wage benefit credit and the
4 investment tax credit, as applicable, as provided for in the act.
5 The application, and all supporting documentation, to the extent
6 approved, shall be considered a part of the agreement. The
7 agreement shall contain such terms and conditions as the board
8 shall specify in order to carry out the legislative purposes of the
9 act. The agreement shall contain provisions to allow the
10 Department of Revenue to verify that the required levels of
11 employment and investment have been attained and maintained. The
12 agreement shall contain provisions to require verification that the
13 required levels have been attained before any credits are used.
14 The agreement shall contain such other conditions or requirements,
15 if any, for the company as established by the department to carry
16 out the purposes of the act.

17 (7) Any investment or employment which is eligible for
18 benefits under the Quality Jobs Act shall not be included in a
19 project under the Invest Nebraska Act. A project under the Invest
20 Nebraska Act may involve the same location as another project under
21 the Invest Nebraska Act or under the Quality Jobs Act, except that
22 no new employment or new investment shall be included in more than
23 one project for either the meeting of the employment or investment
24 requirements or the creation of tax incentives. When projects
25 overlap and the project application does not otherwise clearly
26 specify, the company shall specify in which project the employment
27 and investment belongs. Any employment or investment which is

1 eligible for benefits under the Invest Nebraska Act may also be
2 included in, and create incentives for, a project under the
3 Employment and Investment Growth Act, the Employment Expansion and
4 Investment Incentive Act, and the Rural Economic Opportunities Act,
5 to the extent otherwise allowable under such respective acts.

6 (8) In order to provide the degree of certainty necessary
7 to enable a project to proceed, and notwithstanding any provision
8 of Nebraska statute or common law to the contrary, to the extent
9 any such right of appeal or challenge otherwise exists, no appeal
10 or challenge of the board's decision by any person shall be filed
11 after the expiration of thirty days after the board's decision."

12 2. On page 2, line 1, strike "39" and insert "40"; in
13 line 11 strike "27" and insert "28"; in line 27 after "means"
14 insert "(a)".

15 3. On page 3, line 1, after the comma insert "(b)"; and
16 in line 8 after "taxes" insert ", and (c) any cooperative exempt
17 from such taxes under section 521 of the Internal Revenue Code of
18 1986, as amended".

19 4. On page 4, line 1, after the period insert "An
20 employee of a qualified employee leasing company shall be
21 considered to be an employee of the client-lessee if the employee
22 performs services for the client-lessee. A qualified employee
23 leasing company shall provide the Department of Revenue access to
24 the records of employees leased to the client-lessee."

25 5. On page 5, line 8, after "by" insert "all"; in line
26 11 strike "of"; and in line 12 after "company" insert "applied for
27 benefits".

1 6. On page 8, strike beginning with "public" in line 2
2 through "and" on line 3.

3 7. On page 10, line 15, after "transferable" insert ",
4 except that any credit to be taken against the income tax liability
5 of the company and allowable to a partnership, a limited liability
6 company, a subchapter S corporation, or a cooperative may be
7 distributed to the partners, members, shareholders, or patrons in
8 the same manner as income is distributed for use against their
9 income tax liabilities".

10 8. On page 20, after line 25 insert the following new
11 subsection:

12 "(5) When recapture occurs with regard to any
13 partnership, limited liability company, subchapter S corporation,
14 joint venture, or cooperative, the partnership, limited liability
15 company, subchapter S corporation, joint venture, or cooperative
16 shall be liable for payment of the required recapture.".

17 9. On page 23, line 15, before "There" insert "There
18 shall be no project applications for projects described in
19 subdivision (3)(d) of section 34 of this act filed on or after
20 January 1, 2004, without further authorization of the Legislature,
21 except that all such project applications and all such project
22 agreements pending, approved, or entered into before such date
23 shall continue in full force and effect.".

24 10. Renumber the remaining sections and correct internal
25 references accordingly.