

ONE HUNDRED FIRST LEGISLATURE - SECOND SESSION - 2010
COMMITTEE STATEMENT (CORRECTED)
LB1081

Hearing Date: Wednesday February 03, 2010
Committee On: Revenue
Introducer: Cornett
One Liner: Provide a tax credit and authorize job training grants for teleworkers

Roll Call Vote - Final Committee Action:
Advanced to General File with amendment(s)

Vote Results:
Aye: 8 Senators Adams, Cornett, Dierks, Hadley, Louden, Pirsch, Utter, White
Nay:
Absent:
Present Not Voting:

Proponents:	Representing:
Senator Abbie Cornett	Introducer
Tom Barker	West Corp
Rod Bennett	West Corp
Mary Wolf	Herself

Opponents:	Representing:
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Neutral:	Representing:
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Summary of purpose and/or changes:

LB 1081 would provide for a refundable income tax credit or a refund of state sales and use taxes paid to any taxpayer who has an approved agreement under the Nebraska Advantage Rural Development Act who employs teleworkers on a full-time or part-time basis in the teleworkers' residences in any county in Nebraska with a population under 25,000 people. The bill needs an amendment specifying the dollar amount of the tax credit or refund; however, total tax credits for all such taxpayers would be capped at \$1 million per fiscal year.

Additionally, LB 1081 would authorize job training grants of an as yet unspecified dollar amount for qualified employers who employ full-time or part-time teleworkers. The bill needs an amendment specifying the dollar amount of the job training grants; however, total grants for all such employers would be capped at \$500,000 per fiscal year.

Section 1: Would provide for a refundable income tax credit or a refund of state sales and use taxes paid of an amount "not to exceed xxx thousand dollars" for each teleworker to any taxpayer who has an approved application under the Nebraska Advantage Rural Development Act who is engaged in a qualifying business and employs teleworkers on a full-time or part-time basis in the teleworkers' residences in any county in Nebraska with a population under 25,000 people. Total tax credits for all such taxpayers would be capped at \$1 million per fiscal year. [LB 1081, sec. 1, amending Neb. Rev. Stat. sec. 77-27,188 by adding new subparagraph (4).]

Section 2: Would authorize job training grants of an as yet unspecified dollar amount (i.e., "not to exceed xxx thousand dollars") for each teleworker to any business engaged in a qualifying business as described in the Nebraska Advantage Rural Development Act (i.e., Neb. Rev. Stat. sec. 77-27,189) who employs teleworkers on a full-time or part-time basis

in the teleworkers' residences in any county in Nebraska with a population under 25,000 people. Total job training grants for all such employers would be capped at \$500,000 per fiscal year. [LB 1081, sec. 2, amending Neb. Rev. Stat. sec. 81-1203 by adding new subparagraph (4).]

Section 3: Would amend Neb. Rev. Stat. sec. 81-1204 to coordinate with changes made by LB 1081, sec. 2. It would provide that, except as otherwise provided in Neb. Rev. Stat. sec. 81-1203(4), the Department of Economic Development would be prohibited from approving a job training grant that exceeds an average expenditure of \$5,000 per job created if the proposed wage levels do not exceed \$30,000 per year or that exceeds an average expenditure of \$10,000 per job if the proposed wage levels exceed \$30,000 per year. [LB 1081, sec. 3, amending Neb. Rev. Stat. sec. 81-1204.]

Section 4: Would reenact the statute sections amended by LB 1081.

Explanation of amendments:

The Revenue Committee (AM1930) would rewrite the bill by striking all of its original sections, including its tax credit provisions, and inserting 12 new sections to adopt the "Teleworker Job Creation Act" (TJCA), which would provide for a job training reimbursement program -- administered by the Department of Economic Development (DED)-- for a qualified employer to provide qualified job training for qualified teleworkers who reside in Nebraska and perform the work in their homes.

Section 1: Provides that sections 1 to 11 of AM1930 would be known as the "Teleworker Job Creation Act."

Section 2: States legislative findings and declarations, including (1) current economic conditions in Nebraska have resulted in unemployment, loss of jobs, and difficulty attracting new jobs; and (2) it is state policy to revise Nebraska's job training structure to encourage businesses to promote creating and training for new jobs that can be performed at home in Nebraska.

Section 3: Sets forth definitions of nine key terms, including defining "employer," "qualified employee," "qualified training program," and "teleworker."

"Employer" means a specified type of entity, including a corporation and members of a unity group that employs teleworkers for which the job training reimbursements are applied under the TJCA. A "qualified employee" is a teleworker who has nine specified characteristics, including the teleworker is an employee of the employer; a resident of Nebraska on the date of his or her application; completes a qualified training program; is not a base-year employee of the employer; is not required to buy a computer from the employer; passes job-related tests required by the qualified training program; has passed a criminal background check as required by the employer; and completes the hiring process from home, except for any drug testing and notarized proof of identity which can be performed at a location directed by the employer. A "qualified training program" must have five specified features, including training to become a teleworker; at least 15 hours of in-home instruction per trainee; trainees must be paid at least the federal minimum wage per hour of training; and trainees must pass job-related tests established by the employer.

Section 4: (1) Conditions the ability of an employer to earn job training reimbursements under the TJCA on the employer's filing of an application for an agreement with the director of DED; (2) specifies the required contents of the application, including a \$500 application fee; (3) requires the director of DED to approve an application and authorizing the total amount of job training reimbursements expected to be earned as a result of the project if he or she is satisfied that the plan defines a project that meets the TJCA's eligibility requirements and those requirements will be met within 365 calendar days after the date the application was filed; and (4) requires the director of DED to use the Job Training Cash Fund to provide reimbursements allowed by the TJCA and to also use the subaccount created under Neb. Rev. Stat. sec. 81-1201.21(3) to provide TJCA-qualified reimbursements for training of teleworkers who reside in (a) rural areas of Nebraska or (b) areas of high concentration of poverty within the corporate limits of a city or village that has one or more contiguous census tracts which contain a percentage of persons below the poverty line of greater than 30 percent, and all census tracts contiguous to such tract or tracts, as determined by the most recent decennial census.

Section 4 of AM1930 prohibits DED from approving applications once the director has approved seven project applications during Fiscal Year 2010-11 and the expected job training reimbursements from the approved projects total \$1,050,000 in Fiscal Year 2010-11. Applications must be approved in the order in which they are received for purposes of that limitation, but the \$500 application fee must be refunded if the application is not approved because the expected reimbursements from approved projects exceed such amounts.

Section 4 of AM1930 permits an employer and the director of DED to enter into agreements for more than one project, up to a total of five approved project applications filed in Fiscal Year 2010-11, and those projects can be sequential or concurrent, but no new qualified employee can be included in more than one project for purposes of meeting project requirements or for creating job training reimbursements. The employer can specify which project employment belongs when projects overlap and the plans do not clearly specify to which project employment belongs. The employer must designate which project a qualifying employee belongs until its income or franchise tax return filing date for the applicable year and an employer cannot receive job training reimbursements for a qualifying employee until the employer designates -- on a form approved by and filed with the director of DED -- to which project that qualifying employee belongs.

Section 4 of AM1930 requires DED to approve or deny an application for reimbursements within 30 days after the application was filed; otherwise, the application must be deemed approved, unless DED and the employer agree to extend that 30-day period.

Section 4 of AM1930 also requires the employer and DED to enter into a written agreement after approval of the application. The written agreement must require the employer to complete the project and DED, on behalf of the State of Nebraska, must designate the approved plans of the employer as a project and, in consideration for the employer's agreement, must agree to allow the employer to receive the job training reimbursements in the TJCA up to the total amount of job training reimbursements that were authorized by DED. The application and all supporting documentation, to the extent approved, must be considered part of the agreement, which must also state: (a) the number of qualifying employees required by the TJCA for the project; (b) the time period under the TJCA in which the required level must be met; (c) the documentation that the employer must supply when requesting job training reimbursements under the TJCA; (d) the date of the application; and (e) the maximum amount of job training reimbursements authorized.

Section 5: Requires an employer to submit a description of its training program to DED for review, in order for the employer to be eligible to file an application. If the training program meets the requirements of a "qualified training program" DED must approve the program and issue an approval letter to the employer. A copy of the approval letter must be attached with the employer's application for an agreement with DED under the TJCA.

Section 5 of AM1930 also requires DED to approve or refuse to approve a training program, but the employer must receive DED's decision within 30 days after the employer submits the training program for review; otherwise, the training program must be deemed approved, unless DED and the employer agree to extend that 30-day period. However, if the 30-day period or the extended period lapse without the employer having received DED's decision approving or denying the training program, the employer is authorized to file its application for an agreement with DED under the TJCA with a statement signed by a corporate officer, partner, member, or owner of the employer, stating that "the director failed to issue an approval of or refusal to approve the employer's job training program within the time period" established by Section 5 of AM1930 and that statement must be accepted by DED in lieu of an approval letter.

Section 6: (1) Job training reimbursements must be made to any employer who has an approved application under the TJCA and: (a) who trains at least 400 qualifying employees in a qualifying job training program within 365 calendar days from the application filing date and offers employment to those qualifying employees to work for the employer as a teleworker; and (b) such jobs pay a wage at least equal to the then-required minimum hourly wage under federal law. With respect to the requirement that at least 400 qualifying employees must be trained and offered employment as a teleworker, Section 6 of AM1930 also requires -- to the extent of available job positions -- the employer to give a hiring priority preference, over other similarly qualified applicants, to applicants who: (i) reside in Nebraska counties with population less than 100,000 inhabitants (as determined by the most recent federal decennial census); or (ii) reside in

areas of high concentrations of poverty within the corporate limits of a city or village consisting of one or more contiguous census tracts (as determined by the most recent federal decennial census) which contain a percentage of persons below the poverty line of greater than 30 percent, and all census tracts contiguous to such tract or tracts (as determined by the most recent federal decennial census).

(2) The amount of job training reimbursements allowed is equal to \$300 for each new qualifying employee hired by the employer after the application filing date, up to a total of 500 qualifying employees per project; however, the maximum amount per project is limited to \$150,000.

Section 7: A request for job training reimbursements can be filed annually or quarterly by the employer on a form approved by DED, and each request must verify the number of qualifying employees (designated by project) for which the employer has met the requirements of the TJCA and such amounts must be paid to the employer upon approval by DED.

Section 8: Authorizes DED to audit for compliance with the TJCA, but such audit must be conducted within the statute of limitations applicable to the income or franchise tax returns filed by the employer under the Nebraska Revenue Act of 1967.

Section 9: The right to job training reimbursements and the agreement under the TJCA are not transferable, except when a project covered by an agreement is transferred (a) by sale or lease to another employer or (b) in an acquisition of assets under Internal Revenue Code section 381, which "prescribes a comprehensive set of rules for the preservation of tax attributes, 'based upon economic realities rather than upon artificialities as the legal form of the reorganization.'" [Bittker and Eustice, Federal Income Taxation of Corporations and Shareholders, paragraph 2.11, p. 2-37 (5th edition), quoting S. Rep. No. 1622, 83rd Cong., 2nd Sess. 52 (1954).]

Additionally, the acquiring employer -- as of the date of DED's notification of the completed transfer -- is entitled to any unused job training reimbursements and to any future job training reimbursements allowed under the TJCA; however, the acquiring employer is liable for any repayment that becomes due after the date of the transfer for repayment of any benefits received before or after the transfer.

Section 10: Interest is not allowed on any job training reimbursements earned under the TJCA.

Section 11: An employer's participation in the TJCA will not preclude the employer from receiving tax incentives or other benefits under other federal, state, or local incentive programs.

Section 12: Enacts the emergency clause.

Abbie Cornett, Chairperson