

LEGISLATIVE BILL 1081

Approved by the Governor April 7, 2010

Introduced by Cornett, 45; Mello, 5.

FOR AN ACT relating to economic development; to amend section 81-1201.21, Revised Statutes Supplement, 2009, as amended by section 72, Legislative Bill 3, One Hundred First Legislature, First Special Session, 2009; to adopt the Teleworker Job Creation Act; to provide for use of the Job Training Cash Fund; to repeal the original section; and to declare an emergency.

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

Section 1. Sections 1 to 11 of this act shall be known and may be cited as the Teleworker Job Creation Act.

Sec. 2. The Legislature hereby finds and declares that:

(1) Current economic conditions in the state have resulted in unemployment, loss of jobs, and difficulty in attracting new jobs; and

(2) It is the policy of the state to make revisions in Nebraska's job training structure to encourage businesses to promote the creation of and training for new jobs which can be performed in the home within the state.

Sec. 3. For purposes of the Teleworker Job Creation Act:

(1) Application filing date means the date that the employer files an application for an agreement with the director under the act;

(2) Base year means the three hundred sixty-five days immediately preceding the application filing date;

(3) Base-year employee means any individual who was employed in Nebraska and subject to the Nebraska income tax on compensation received from the employer or its predecessors during the base year and who is employed at the project;

(4) Director means the Director of Economic Development;

(5) Employer means a corporation, partnership, limited liability company, cooperative, limited cooperative association, or joint venture, together with such other entities that are, or would be if incorporated, members of the same unitary group as defined in section 77-2734.04, that employs the teleworkers for which the job training reimbursements are applied for under the act;

(6) Qualified training program means a training program which has the following features: (a) The program has at least fifteen hours of instruction per trainee, all of which will occur in the trainee's residence; (b) trainees are each paid at least the federal minimum hourly wage per hour of training performed; (c) trainees are being trained as teleworkers; and (d) the program requires the trainees to pass job-related tests established by the employer;

(7) Qualifying employee means a teleworker who has the following characteristics: (a) The teleworker constitutes an employee of the employer under section 77-2753; (b) the teleworker resides in Nebraska at the time of his or her employment application according to his or her statement on his or her employment application; (c) the teleworker completes a qualified training program; (d) the teleworker is not a base-year employee; (e) the teleworker is not required to purchase a computer from the employer; (f) the teleworker has passed such job-related tests required under the qualified training program; (g) the teleworker has passed a criminal background check as required by the employer; and (h) the teleworker has been allowed to complete the hiring process paperwork from his or her residence, except for any drug testing and notarized proof of identity, which can be performed at such location directed by the employer; and

(8) Teleworker means a person who works for the employer from his or her residence through the use of telecommunication systems, such as the telephone and the Internet, for inbound-only service and order-taking sales calls, which calls may also include the upselling of related products or services.

Sec. 4. (1) To earn the job training reimbursements set forth in the Teleworker Job Creation Act, an employer shall file an application for an agreement with the director. An application may be filed at any time on or after the effective date of this act.

(2) The application shall contain:

(a) A written statement describing the expected employment of qualifying employees in this state;

(b) Sufficient documents, plans, and specifications as required by the director to support the plan and to define a project; and

(c) A copy of the letter submitted to the director seeking approval of the employer's qualified training program.

(3) The application and all supporting information shall be confidential except, for each project:

(a) The name of the employer;

(b) The amount of the job training reimbursement;

(c) The number of persons trained, with such number divided into three categories: The number who reside in rural areas; the number who reside in poverty areas; and the number who reside in all other parts of Nebraska, based on the rural areas and poverty areas described in section 6 of this act; and

(d) The amount of total wages and other payments subject to withholding, as defined in section 77-2753, paid by the employer to all teleworkers who reside in Nebraska, with such residence as determined by the statement of the qualifying employee on his or her employment application, within three hundred sixty-five days prior to the date of application, for the year of the project, and for the following twelve months.

The employer shall be required to provide this information to the director upon written request by the director.

(4) (a) The director shall approve the application and authorize the total amount of job training reimbursements expected to be earned as a result of the project if he or she is satisfied that (i) the plan in the application defines a project that meets the eligibility requirements established within the Teleworker Job Creation Act and (ii) such requirements will be reached within three hundred sixty-five calendar days after the application filing date. The director shall use the subaccount created under subsection (3) of section 81-1201.21 to provide reimbursements allowed by the act for the training of teleworkers.

(b) The director shall not approve further applications once the director has approved seven project applications filed before the end of fiscal year 2010-11 and the expected job training reimbursements from the approved projects total one million fifty thousand dollars in fiscal year 2010-11. Applications for an agreement shall for purposes of this limit be approved in the order in which they are received by the director.

(c) An employer and the director may enter into agreements for more than one project, up to a total of five approved project applications filed before the end of fiscal year 2010-11. The projects may be either sequential or concurrent. No new qualifying employees shall be included in more than one project for meeting the project requirements or the creation of job training reimbursements. When projects overlap and the plans do not clearly specify, the employer shall specify to which project the employment belongs. The employer has until it submits its request for reimbursement to the director to designate to which project a qualifying employee belongs. The employer may not receive job training reimbursements for a qualifying employee until the employer designates to which project that qualifying employee belongs. Such designation shall be made on such form to be filed with the director as the director shall direct.

(5) After approval, the employer and the director shall enter into a written agreement. The employer shall agree to complete the project, and the director, on behalf of the State of Nebraska, shall designate the approved plans of the employer as a project and, in consideration of the employer's agreement, agree to allow the employer to receive the job training reimbursements contained in the Teleworker Job Creation Act up to the total amount of job training reimbursements that were authorized by the director. The application and all supporting documentation, to the extent approved, shall be considered a part of the agreement. The agreement shall state:

(a) The number of qualifying employees required by the act for the project;

(b) The time period under the act in which the required level must be met;

(c) The documentation the employer will need to supply when requesting the job training reimbursements under the act;

(d) The date the application was filed; and

(e) The maximum amount of job training reimbursements authorized.

Sec. 5. (1) To be eligible to file an application for an agreement with the director under the Teleworker Job Creation Act, the employer shall submit a description of its training program to the director for review.

(2) If the employer's training program meets the requirements to constitute a qualified training program under the act, the director shall approve such program and provide the employer with an approval letter.

Sec. 6. (1) Job training reimbursements shall be made to any employer who has an approved application pursuant to the Teleworker Job

Creation Act and who trains at least four hundred qualifying employees in a qualified training program within three hundred sixty-five calendar days from the application filing date and offers employment to those qualifying employees to work for the employer as a teleworker. The employer shall, to the extent of available job positions, give a hiring priority preference, over other similarly qualified applicants, to those applicants who (a) reside in Nebraska counties of less than one hundred thousand inhabitants, as determined by the most recent federal decennial census, with such residence as determined by the statement of the qualifying employee on his or her employment application, or (b) reside in areas of high concentration 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 thirty percent, and all census tracts contiguous to such tract or tracts, as determined by the most recent federal decennial census. Such job positions shall pay a wage of at least the then-required minimum hourly wage required by federal law. If the employer fails to provide such a hiring priority preference to one or more of the persons entitled to it, then the employer shall lose the right to one job training reimbursement for each such failure.

(2) The amount of the job training reimbursements allowed under subsection (1) of this section shall be three hundred dollars for each new qualifying employee hired by the employer after the application filing date, up to a total of five hundred qualifying employees per project, resulting in a maximum reimbursement per project of one hundred fifty thousand dollars.

Sec. 7. A request for job training reimbursements may be filed annually or quarterly by the employer on a form required by the director. Each request shall contain verification of the number of qualifying employees, designated by project, for which the employer has met the requirements of the Teleworker Job Creation Act, and such amounts shall be paid to the employer upon approval by the director.

Sec. 8. The Department of Economic Development shall, prior to making the job training reimbursement, audit the employer for compliance with the Teleworker Job Creation Act. The department may utilize the subaccount created under subsection (3) of section 81-1201.21 to support the costs of audits and administration of the Teleworker Job Creation Act.

Sec. 9. (1) The right to job training reimbursements and the agreement under the Teleworker Job Creation Act shall not be transferable except when a project covered by an agreement is transferred by sale or lease to another employer or in an acquisition of assets qualifying under section 381 of the Internal Revenue Code of 1986.

(2) The acquiring employer, as of the date of notification of the director of the completed transfer, shall be entitled to any unused job training reimbursements and to any future job training reimbursements allowable under the act.

Sec. 10. Interest shall not be allowable on any job training reimbursements earned under the Teleworker Job Creation Act.

Sec. 11. Participation in the Teleworker Job Creation Act shall not preclude an employer from receiving tax incentives or other benefits under other federal, state, or local incentive programs.

Sec. 12. Section 81-1201.21, Revised Statutes Supplement, 2009, as amended by section 72, Legislative Bill 3, One Hundred First Legislature, First Special Session, 2009, is amended to read:

81-1201.21 (1) There is hereby created the Job Training Cash Fund. The fund shall be under the direction of the Department of Economic Development. Money may be transferred to the fund pursuant to subdivision (1)(b)(iv) of section 48-621 and from the Cash Reserve Fund at the direction of the Legislature. The department shall establish a subaccount for all money transferred from the Cash Reserve Fund to the Job Training Cash Fund on or after July 1, 2005. Any unexpended or unobligated balance remaining within such subaccount on July 1, 2014, shall be transferred by the State Treasurer to the Cash Reserve Fund no later than July 10, 2014. Any obligated amount not transferred from the subaccount that remains unexpended on July 1, 2013, shall be transferred by the State Treasurer to the Cash Reserve Fund no later than December 31, 2015. Transfers may be made from the Job Training Cash Fund to the General Fund at the direction of the Legislature.

(2) The department shall use the Job Training Cash Fund to provide reimbursements for job training activities, including employee assessment, preemployment training, on-the-job training, training equipment costs, and other reasonable costs related to helping industry and business locate or expand in Nebraska, or to provide upgrade skills training of the existing labor force necessary to adapt to new technology or the introduction of new

product lines.

(3) The department shall establish a subaccount within the fund to provide job training grants targeted to small employers, rural employers, and poverty area employers meeting one of the following criteria: (a) Employ twenty-five or fewer employees, (b) located in rural areas of Nebraska, or (c) located in areas of high concentration 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 thirty percent, and all census tracts contiguous to such tract or tracts, as determined by the most recent federal decennial census. The department shall calculate the amount of prior year investment income earnings accruing to the fund and allocate such amount to the subaccount for small, rural, or poverty area employer grants. The subaccount shall also be used as provided in the Teleworker Job Creation Act.

(4) 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.

Sec. 13. Original section 81-1201.21, Revised Statutes Supplement, 2009, as amended by section 72, Legislative Bill 3, One Hundred First Legislature, First Special Session, 2009, is repealed.

Sec. 14. Since an emergency exists, this act takes effect when passed and approved according to law.