

ENGROSSED LEGISLATIVE BILL 649

Introduced by Revenue Committee: von Gillern, 4, Chairperson; Ibach, 44; Kauth, 31; Murman, 38; Sorrentino, 39.

A BILL FOR AN ACT relating to revenue and taxation; to adopt the Defense Efforts Workforce Act; and to provide an operative date.

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

Section 1. Sections 1 to 20 of this act shall be known and may be cited as the Defense Efforts Workforce Act.

Sec. 2. The purpose of the Defense Efforts Workforce Act is to provide incentives to encourage employers to locate their workforce in this state to support military defense efforts and foster the growth of the workforce required to advance global defense communications and technologies.

Sec. 3. For purposes of the Defense Efforts Workforce Act, the definitions found in sections 4 to 14 of this act shall be used.

Sec. 4. Any term defined in the Nebraska Revenue Act of 1967 has the same meaning in the Defense Efforts Workforce Act unless the context or the express language of the Defense Efforts Workforce Act requires a different meaning.

Sec. 5. Base year means the year immediately preceding the year of application.

Sec. 6. Defense contractor has the same meaning as in 50 U.S.C. 4552, as such section existed on January 1, 2025.

Sec. 7. Full-time employee means with respect to any month, an employee who is employed on average at least thirty hours of service per week.

Sec. 8. Nebraska statewide average hourly wage for any year means the most recent statewide average hourly wage paid by all employers in all counties in Nebraska as calculated by the Office of Labor Market Information of the Department of Labor using annual data from the Quarterly Census of Employment and Wages by October 1 of the year prior to application. Hourly wages shall be calculated by dividing the reported average annual weekly wage by forty.

Sec. 9. Performance period means the year of application plus the next

nine years.

Sec. 10. Qualified employee means a person employed by the taxpayer who is (1) a full-time employee, (2) exclusively dedicated to supporting military defense efforts in this state, (3) paid wages at a rate equal to at least one hundred fifty percent of the Nebraska statewide average hourly wage, and (4) employed in a position in which no one was employed within this state prior to July 1, 2025.

Sec. 11. Qualified employer means a taxpayer that:

(1) Employs (a) at least ten full-time qualified employees in Nebraska during the base year and (b) at least the same number of full-time qualified employees as were employed in the prior year for each year of the performance period;

(2) Pays wages for services rendered (a) at a rate equal to at least one hundred fifty percent of the Nebraska statewide average hourly wage in the base year and (b) at a rate equal to at least one hundred two percent of the prior year wage level during each year of the performance period; and

(3) Electronically verifies the work eligibility status of all new qualified employees employed in Nebraska prior to hire during the entire performance period.

Sec. 12. Taxpayer means any person subject to sales and use taxes under the Nebraska Revenue Act of 1967 and subject to withholding under section 77-2753 and any entity that is or would otherwise be a member of the same unitary group, if incorporated, that is subject to such sales and use taxes and such withholding. Taxpayer does not include a political subdivision or an organization that is exempt from income taxes under section 501(a) of the Internal Revenue Code of 1986, as amended. For purposes of this section, political subdivision includes any public corporation created for the benefit of a political subdivision and any group of political subdivisions forming a joint public agency, organized by interlocal agreement, or utilizing any other method of joint action.

Sec. 13. Wage credit means the credit described in the Defense Efforts

Workforce Act.

Sec. 14. Year means calendar year.

Sec. 15. (1) If a qualified employer has entered into an agreement with the state pursuant to section 16 of this act, the qualified employer shall during each year of the performance period receive the wage credit approved by the Tax Commissioner in the manner provided in the Defense Efforts Workforce Act.

(2) The wage credit shall equal five percent of the total compensation paid by the qualified employer in the year to all qualified employees of the qualified employer in Nebraska. The wage credit earned for all qualified employers shall not exceed four million dollars in any year. If two or more qualified employers qualify for benefits in any given year, the one with the earlier approval will be fully funded first.

(3) The wage credits shall be allowed for each year in the performance period. Unused credits may carry over and be applied against future state withholdings.

(4) The total amount all qualified employers may receive in credits pursuant to the Defense Efforts Workforce Act shall not exceed forty million dollars. If two or more qualified employers qualify for benefits, the one with the earlier approval will be fully funded first. This benefit is in addition to any benefits the qualified employer may otherwise qualify for under the Imagine Nebraska Act or may have qualified for previously under the Nebraska Advantage Act, the Employment and Investment Growth Act, or the Key Employer and Jobs Retention Act.

(5) The qualified employer may use the wage credit to reduce the qualified employer's income tax withholding or payor tax liability under section 77-2756 or 77-2757. To the extent of the credit used, such withholding shall not constitute public funds or state tax revenue and shall not constitute a trust fund or be owned by the state. The use by the qualified employer of the credit shall not change the amount that otherwise would be reported by the qualified employer to the employee under section 77-2754 as income tax withheld and shall

not reduce the amount that otherwise would be allowed by the state as a refundable credit on an employee's income tax return as income tax withheld under section 77-2755.

Sec. 16. (1) In order for the qualified employer to be eligible for the wage credit, the qualified employer shall file an application for an agreement with the Tax Commissioner.

(2) The application shall:

(a) State the exact name of the taxpayer and any related companies;

(b) Include a detailed description of the nature of the company's business, including the products sold, services rendered, and respective markets in which such products or services are sold or rendered, to demonstrate the company is a defense contractor;

(c) Request that the company be considered for approval under the Defense Efforts Workforce Act;

(d) Acknowledge that the qualified employer understands and complies with the requirements for verifying the work eligibility status of all new qualified employees;

(e) Include a description, in detail, regarding each qualified employee employed during the base year, including employment status and wages paid; and

(f) Include a nonrefundable application fee of five thousand dollars. The fee shall be remitted to the State Treasurer for credit to the Nebraska Incentives Fund.

(3) Any complete application shall be considered a valid application on the date submitted for the purposes of the Defense Efforts Workforce Act.

(4) The application and all supporting information are confidential except for the name of the taxpayer, the number of qualified employees, and whether the application has been approved.

(5) The Tax Commissioner shall determine whether to approve the application based upon whether the applicant meets the definition of a qualified employer.

(6) The Tax Commissioner shall notify the applicant in writing as to

whether the application has been approved or not. The Tax Commissioner shall decide and mail the notice within thirty days after receiving the application, regardless of whether he or she approves or disapproves the application, unless the time is extended by mutual written consent of the Tax Commissioner and the applicant.

(7) An application may be approved only if it is consistent with the legislative purposes contained in section 2 of this act.

(8) If the application is approved by the Tax Commissioner, the qualified employer 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 qualified employer shall agree to maintain the required level of employment and make the required wage increases, and in consideration of the qualified employer's agreement, the state shall agree to allow the wage credits as provided in the Defense Efforts Workforce Act. The application, and all supporting documentation, to the extent approved, shall be considered a part of the agreement. The agreement may contain such terms and conditions as the Tax Commissioner specifies in order to carry out the legislative purposes of the Defense Efforts Workforce Act. The agreement shall contain provisions to allow the Tax Commissioner to verify that the required levels of employment have been maintained and the appropriate increases in wages have been made.

Sec. 17. (1) If the taxpayer fails to maintain the required level of employment and meet the wage requirements through the entire performance period, all or a portion of the wage credits shall be recaptured directly by the state from the taxpayer or shall be disallowed. In no event shall any wage credits be required to be paid back directly or indirectly by the employees. All such credits must be repaid by the taxpayer.

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

(a) No wage credits shall be allowed, and if already allowed shall be recaptured, for the actual year or years in which the required level of employment was not maintained or the wage requirement was not met;

(b) For wage credits allowed in prior years, one-tenth of the credits

shall be recaptured from the taxpayer for each year the required level of employment was not maintained or the wage requirement was not met; and

(c) For wage credits for future years, one-tenth of the credits shall be disallowed for each year the required level of employment was not maintained or the wage requirement was not met in previous years.

(3) Any amounts required to be recaptured shall be deemed to be an underpayment of tax, immediately due and payable, and shall constitute a lien on the assets of the taxpayer. When wage 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 shall be recovered up to the extent of the required recapture.

(4) Interest shall accrue from the due date for the return for the year in which the taxpayer failed to maintain the required level of employment or meet the required wage level.

(5) Penalties shall not accrue until ninety days after the requirement for recapture or disallowance becomes known or should have become known to the taxpayer.

(6) The recapture or disallowance required by this section may be waived by the Tax Commissioner if he or she finds the failure to maintain the required level of employment or meet the required wage level was caused by unavoidable circumstances such as an act of God or a national emergency.

Sec. 18. (1) The wage credits allowed under the Defense Efforts Workforce Act shall not be transferable except in the following situations:

(a) Any credit allowable to a partnership, a limited liability company, a subchapter S corporation, a cooperative, including a cooperative exempt under section 521 of the Internal Revenue Code of 1986, as amended, a limited cooperative association, or an estate or trust may be distributed to the partners, members, shareholders, patrons, or beneficiaries in the same manner as income is distributed for use against their income tax liabilities, and such partners, members, shareholders, or beneficiaries shall be deemed to have made an underpayment of their income taxes for any recapture required by section 17

of this act. A credit distributed shall be considered a credit used and the partnership, limited liability company, subchapter S corporation, cooperative, including a cooperative exempt under section 521 of the Internal Revenue Code of 1986, as amended, limited cooperative association, estate, or trust shall be liable for any repayment required by section 17 of this act; and

(b) The credits previously allowed and future credits may be transferred when an agreement is transferred in its entirety by sale or lease to another taxpayer or in an acquisition of assets qualifying under section 381 of the Internal Revenue Code of 1986, as amended.

(2) The acquiring taxpayer, as of the date of notification to the Tax Commissioner of the completed transfer, shall be entitled to any unused credits and to any future credits allowable under the Defense Efforts Workforce Act.

(3) The acquiring taxpayer shall be liable for any recapture that becomes due after the date of the transfer for the repayment of any credits received either before or after the transfer.

(4) If a taxpayer dies and there is a credit remaining after the filing of the final return for the taxpayer, the personal representative shall determine the distribution of the credit or any remaining carryover with the initial fiduciary return filed for the estate. The determination of the distribution of the credit may be changed only after obtaining the permission of the Tax Commissioner.

(5) The Tax Commissioner may disclose information to the acquiring taxpayer about the agreement and prior credits that is reasonably necessary to determine the future credits and liabilities of the taxpayer.

Sec. 19. The Tax Commissioner may adopt and promulgate rules and regulations necessary or appropriate to carry out the purposes of the Defense Efforts Workforce Act.

Sec. 20. (1) The Department of Revenue shall submit electronically an annual report to the Legislature no later than October 31 of each year. The report shall be on a fiscal year, accrual basis that satisfies the requirements set by the Governmental Accounting Standards Board. The Department of Revenue

shall, on or before December 15 of each year, appear at a joint hearing of the Appropriations Committee of the Legislature and the Revenue Committee of the Legislature and present the report. Any supplemental information requested by three or more committee members must be provided within thirty days after the request.

(2) The report shall list (a) the agreements which have been signed during the previous calendar year, (b) the agreements which are still in effect, and (c) the identity of each taxpayer that is a party to an agreement.

(3) The report shall provide information on agreement-specific total credits used every two years for each agreement. The report shall disclose the identity of the taxpayer and the total credits used during the immediately preceding two years, expressed as a single, aggregated total. The information required to be reported under this subsection shall not be reported for the first year the taxpayer maintains the required employment threshold. The information on first-year credits used shall be combined with and reported as part of the second year. Thereafter, the information on credits used for succeeding years shall be reported for each agreement every two years containing information on two years of credits used.

(4) No information shall be provided in the report that is protected by state or federal confidentiality laws.

Sec. 21. This act becomes operative on July 1, 2027.

PRESIDENT OF THE LEGISLATURE

*THIS IS TO CERTIFY that the within LB 649 was passed by the One Hundred Ninth
Legislature of Nebraska at its First Session on the day
of 20.....*

CLERK OF THE LEGISLATURE

Approved:

..... 20....., o'clockM.

GOVERNOR