

## LEGISLATIVE BILL 1290

Approved by the Governor April 15, 1996

Introduced by Warner, 25, at the request of the Governor

AN ACT relating to revenue and taxation; to amend sections 77-4112 and 84-612, Reissue Revised Statutes of Nebraska, and sections 77-4104, 77-4602, and 77-4603, Revised Statutes Supplement, 1994; to change provisions relating to fund transfers and revenue forecasts; to provide duties for the Department of Revenue; to change provisions of the Employment and Investment Growth Act and to provide for applicability of the provisions; to repeal the original sections; and to declare an emergency.

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

Section 1. The Department of Revenue shall, on or before the fifteenth day of October and February of every year and the fifteenth day of April in odd-numbered years, make an estimate of the amount of sales tax refunds to be paid under the Employment and Investment Growth Act during the fiscal years to be forecast under section 77-27.158. The estimate shall be based on the most recent data available including pending and approved applications and updates thereof as are required by subdivisions (2)(e) and (4)(e) of section 77-4104. The estimate shall be forwarded to the Legislative Fiscal Analyst and the Nebraska Economic Forecasting Advisory Board and made a part of the advisory forecast required by section 77-27.158.

Sec. 2. Section 77-4104, Revised Statutes Supplement, 1994, is amended to read:

77-4104. (1) In order to utilize the incentives set forth in the Employment and Investment Growth Act, the taxpayer shall file an application for an agreement with the Tax Commissioner.

(2) The application shall contain:

(a) A written statement describing the plan of the employment and investment for a qualified business in this state;

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

(c) If more than one location within this state is involved, sufficient documentation to show that the employment and investment at different locations are interdependent parts of the plan. A headquarters shall be presumed to be interdependent with any other location directly controlled by such headquarters. A showing that the parts of the plan would be considered parts of a unitary business for corporate income tax purposes shall not be sufficient to show interdependence for the purposes of this subdivision; and

(d) A nonrefundable application fee of five hundred dollars. The fee shall be deposited into the Employment and Investment Growth Fund, which fund is hereby 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; and

(e) A timetable showing the expected sales tax refunds and what year they are expected to be claimed. The timetable shall include both direct refunds due to investment and credits taken as sales tax refunds as accurately as possible.

The application and all supporting information shall be confidential except for the information required to be reported by section 77-4110 and section 1 of this act.

(3) Once satisfied that the plan in the application defines a project consistent with the purposes stated in section 77-4102 in one or more qualified business activities within this state, that the plans will result in either (a) the investment in qualified property of at least three million dollars and the hiring of at least thirty new employees or (b) the investment in qualified property resulting in a net gain in the total value of tangible property in this state of a type subject to depreciation, amortization, or other recovery under the Internal Revenue Code of 1986 of at least twenty million dollars, and that the required levels of employment and investment for the project will be met prior to the end of the sixth year after the year in which the application was submitted, the Tax Commissioner shall approve the application. In determining the net gain in value for purposes of this subsection, all tangible personal property shall be valued in a manner consistent with the value determined for qualified property, and the total value on the last day of each year shall be compared with the total value on

the last day of the base year.

(4) After approval, the taxpayer and the Tax Commissioner shall enter into a written agreement. The taxpayer shall agree to complete the project, and the Tax Commissioner, on behalf of the State of Nebraska, shall designate the approved plans of the taxpayer as a project and, in consideration of the taxpayer's agreement, agree to allow the taxpayer to use the incentives contained in the Employment and Investment Growth Act. The application, and all supporting documentation, to the extent approved, shall be considered a part of the agreement. The agreement shall state:

(a) The levels of employment and investment required by the act for the project;

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

(c) The documentation the taxpayer will need to supply when claiming an incentive under the act; and

(d) The date the application was filed; and

(e) A requirement that the company update the Department of Revenue annually on any changes in plans or circumstances which affect the timetable of sales tax refunds as set out in the application. If the company fails to comply with this requirement, the Tax Commissioner may defer any pending sales tax refunds until the company does comply.

(5) The incentives contained in section 77-4105 shall be in lieu of the tax credits allowed by section 77-27,188 for any project. In computing credits under section 77-27,188, any investment or employment which is eligible for benefits under the Employment and Investment Growth Act shall be subtracted from the increases computed for determining the credits under section 77-27,188.

(6) A taxpayer and the Tax Commissioner may enter into agreements for more than one project and may include more than one project in a single agreement. The projects may be either sequential or concurrent. A project may involve the same location as another project. No new employment or new investment shall be included in more than one project for either the meeting of the employment or investment requirements or the creation of credits. When projects overlap and the plans do not clearly specify, then the taxpayer shall specify in which project the employment and investment belongs.

Sec. 3. Section 77-4112, Reissue Revised Statutes of Nebraska, is amended to read:

77-4112. (1) The changes made in sections 77-4103 to 77-4105 and 77-4107 by Laws 1988, LB 1234, shall become operative for all applications filed on and after January 1, 1988. For all applications filed prior to January 1, 1988, the provisions of the Employment and Investment Growth Act as they existed immediately prior to such date shall apply.

(2) Section 1 of this act and the changes made in section 77-4104 by this legislative bill shall become operative for all applications filed on or after May 1, 1994.

Sec. 4. Section 77-4602, Revised Statutes Supplement, 1994, is amended to read:

77-4602. (1) Within fifteen days after the end of each month, the Tax Commissioner shall provide a public statement of actual General Fund net receipts and a comparison of such actual net receipts to the monthly estimate certified pursuant to section 77-4601.

(2) Within fifteen days after the end of each fiscal quarter year, the public statement shall also include a summary of actual General Fund net receipts and estimated General Fund net receipts for the preceding three months fiscal year.

(3) If the actual General Fund net receipts for the preceding three months fiscal year as reported in subsection (2) of this section exceed estimated receipts for the three-month period fiscal year, the Tax Commissioner shall immediately certify to the Director of Administrative Services director such excess amount. The State Treasurer shall immediately transfer an amount equal to such excess amount from the General Fund to the Cash Reserve Fund upon certification by the director of such excess amount. If the actual General Fund net receipts for the preceding three months are less than estimated General Fund net receipts for the three-month period, the Tax Commissioner shall immediately certify such amount to the director. If there are sufficient funds in the Cash Reserve Fund, the director shall authorize the State Treasurer to transfer the amount certified from the Cash Reserve Fund to the General Fund.

Sec. 5. Section 77-4603, Revised Statutes Supplement, 1994, is amended to read:

77-4603. (1) If an estimate of General Fund net receipts is changed in a regular or extraordinary meeting of the Nebraska Economic Forecasting

Advisory Board and such change results in a special session of the Legislature to revise current fiscal year General Fund appropriations, the Tax Commissioner and the Legislative Fiscal Analyst shall certify the monthly receipt estimates, for the remaining months of the fiscal year, taking into consideration the most recent estimate of General Fund net receipts made by the Nebraska Economic Forecasting Advisory Board plus legislation enacted which has an impact on receipts that were not included in the forecast. The new monthly certification shall be made by the fifteenth day of the month following the adjournment of the special session of the Legislature.

(2) If an estimate of General Fund net receipts is reduced in a regular or extraordinary meeting of the Nebraska Economic Forecasting Advisory Board, the Tax Commissioner and the Legislative Fiscal Analyst shall recertify the monthly receipt estimates, taking into consideration the most recent estimate of General Fund net receipts made by the Nebraska Economic Forecasting Advisory Board plus legislation enacted which has an impact on receipts that was not included in the forecast. The new monthly certification shall be made by the fifteenth day of the month following the meeting of the Nebraska Economic Forecasting Advisory Board.

(3) The new certified annual and monthly receipt estimates shall be used for the public statements required under section 77-4602.

Sec. 6. Section 84-612, Reissue Revised Statutes of Nebraska, is amended to read:

84-612. (1) There is hereby created within the state treasury a fund known as the Cash Reserve Fund which shall be under the direction of the State Treasurer. The fund shall only be used pursuant to this section.

(2) The State Treasurer shall transfer funds from the Cash Reserve Fund to the General Fund upon certification by the Director of Administrative Services that the current cash balance in the General Fund is inadequate to meet current obligations. Such certification shall include the dollar amount to be transferred.

(3) Any transfers made pursuant to subsection (2) of this section shall be reversed upon notification by the Director of Administrative Services that sufficient funds are available.

(4) On June 15, 1992, the State Treasurer shall transfer five million dollars from the Cash Reserve Fund to the General Fund. Such transfer shall be reversed on June 15, 1994.

(5) On June 15, 1993, the State Treasurer shall transfer five million dollars from the Cash Reserve Fund to the General Fund. Such transfer shall be reversed on June 15, 1995.

(6) On June 30, 1993, the State Treasurer shall transfer four million five hundred thousand dollars from the Cash Reserve Fund to the General Fund. Such transfer shall be reversed in the amount of two million two hundred fifty thousand dollars on June 15, 1994, and in the amount of two million two hundred fifty thousand dollars on June 15, 1995.

(7) On or before August 1, 1994, the State Treasurer shall transfer six million dollars from the Cash Reserve Fund to the Job Training Cash Fund.

~~(8) The State Treasurer shall transfer funds from the Cash Reserve Fund to the General Fund upon certification by the Director of Administrative Services pursuant to section 77-4602.~~

Sec. 7. Original sections 77-4112 and 84-612, Reissue Revised Statutes of Nebraska, and sections 77-4104, 77-4602, and 77-4603, Revised Statutes Supplement, 1994, are repealed.

Sec. 8. Since an emergency exists, this act takes effect when passed and approved according to law.