

AMENDMENTS TO LB604

Introduced by Business and Labor.

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

3 Section 1. For purposes of sections 1 to 7 of this act:

4 (1) Affiliate means an entity that, directly or indirectly or
5 through one or more intermediaries controls, is controlled by, or is
6 under common control with another entity. An entity is controlled by
7 another entity if the controlling entity holds, directly or indirectly,
8 the majority voting or ownership interest in the controlled entity or has
9 control over the day-to-day operations of the controlled entity by
10 contract or law;

11 (2) Closing date means the date on which a High-Wage Jobs and
12 Capital Investment Creation Fund entity has received a grant, loan, or
13 other type of economic assistance;

14 (3) Earned job factor means an amount equal to:

15 (a) Ten thousand dollars for factor 1 jobs with an hourly wage rate
16 of at least one hundred fifty percent of the Nebraska minimum wage and
17 which provide full benefits of health care, life insurance, and paid time
18 off;

19 (b) Twenty thousand dollars for factor 2 jobs with an hourly wage
20 rate of at least two hundred percent of the Nebraska minimum wage and
21 which provide full benefits of health care, life insurance, and paid time
22 off;

23 (c) Thirty thousand dollars for factor 3 jobs with an hourly wage
24 rate of at least two hundred fifty percent of the Nebraska minimum wage
25 and which provide full benefits of health care, life insurance, and paid
26 time off; and

27 (d) Forty thousand dollars for factor 4 jobs with an hourly wage

1 rate of at least one hundred fifty percent of the Nebraska minimum wage
2 and which employ veterans, senior citizens, ex-offenders, citizens with
3 disabilities, or any citizen concurrently enrolled in a Department of
4 Health and Human Services assistance program and provide the full
5 benefits of health care, life insurance, and paid time off;

6 (4) Full-time high-wage employment position means an employment
7 position that is filled, pays a wage at least one hundred fifty percent
8 of the Nebraska minimum wage, and requires at least thirty-five hours of
9 work per week or any other period of time generally accepted by custom,
10 industry, or practice as full-time employment;

11 (5) Growth investment means any capital or equity investment in a
12 qualified business or any loan to a qualified business with a stated
13 maturity at least one year after the date of issuance. A secured loan or
14 the provision of a revolving line of credit to a qualified business is a
15 growth investment only if the High-Wage Jobs and Capital Investment
16 Creation Fund entity obtains an affidavit from the president or chief
17 executive officer or equivalent position of the qualified business
18 attesting that the qualified business sought and was denied similar
19 financing from a commercial bank. The affidavit shall include the wages
20 and benefits offered to new employees from the High-Wage Jobs and Capital
21 Investment Creation Fund;

22 (6) Health care means a health plan compliant with the federal
23 Patient Protection and Affordable Care Act, Public Law 111-148;

24 (7) High-Wage Jobs and Capital Investment Creation Fund entity means
25 an entity approved under section 2 of this act that meets all of the
26 following:

27 (a) The entity is a rural business investment company under 7 U.S.C.
28 2009cc or a small business investment company under 15 U.S.C. 681; and

29 (b) As of the date of application under section 3 of this act, the
30 entity and its affiliates have received equity investments from investors
31 who are not affiliates of the applicant in an amount equal to at least

1 seventy-five million dollars;

2 (8) Investment authority means the amount stated on the certificate
3 under section 4 of this act certifying a High-Wage Jobs and Capital
4 Investment Creation Fund entity. A High-Wage Jobs and Capital Investment
5 Creation Fund's investment authority shall be composed of equal amounts
6 of grants, loans, or other types of economic assistance by the High-Wage
7 Jobs and Capital Investment Creation Fund and private contributions;

8 (9) Life insurance means a policy to an amount equal to the annual
9 salary of the employee upon the employee's death;

10 (10) New full-time high-wage employment position means the quotient
11 obtained by dividing the total number of hours for which employees were
12 compensated for employment over the preceding twelve-month period by two
13 thousand eighty, then subtracting the full-time high-wage employment
14 positions at the qualified business on the date of receipt of the initial
15 growth investment, for each year the investment is outstanding;

16 (11) Paid time off means a policy to provide paid time off for one
17 week;

18 (12) Principal business operations means the operations of a
19 business located at the place or places where at least sixty percent of
20 its employees work or where employees that are paid at least sixty
21 percent of its payroll work. A business that has agreed to relocate or
22 hire new employees using the proceeds of a growth investment to establish
23 its principal business operations in a qualified location in this state
24 shall be considered to have its principal business operations in such new
25 location provided that such business satisfies the requirements of this
26 subdivision within one hundred eighty days after receiving the growth
27 investment, unless the Tax Commissioner agrees to a later date. A
28 business located in this state that has agreed to hire new employees in a
29 qualified location using the proceeds of a growth investment to establish
30 its principal business operations in that qualified location shall be
31 considered to have its principal business operations in such qualified

1 location if it hires the necessary employees within one hundred eighty
2 days after receiving the growth investment or a later date, if agreed to
3 by the Tax Commissioner;

4 (13) Private contributions means an investment of cash in a High-
5 Wage Jobs and Capital Investment Creation Fund entity to match
6 dollar-for-dollar the grants, loans, or other types of economic
7 assistance up to the investment authority of the High-Wage Jobs and
8 Capital Investment Creation Fund entity. A High-Wage Jobs and Capital
9 Investment Creation Fund entity's private contributions shall be composed
10 of not less than ten percent of equity investments;

11 (14) Qualified business means an operating business that, at the
12 time of the initial investment in the business by a high-wage and capital
13 investment fund entity, has fewer than one hundred fifty employees and is
14 engaged in industries assigned a North American Industry Classification
15 System code within sectors 11, 21, 23, 31 through 33, 42, 48, 49, 54,
16 except 541110 through 541219, 56, 62, or 81 or, if not engaged in any of
17 these industries, the Tax Commissioner determines that the investment
18 will be beneficial to the qualified location and the economic growth of
19 this state;

20 (15) Qualified location means a location that meets at least one of
21 the following criteria: (a) A census tract within the State of Nebraska
22 with a poverty rate of twenty percent or greater; (b) a census tract
23 within the State of Nebraska with a median family income of eighty
24 percent or less of that area's median family income; (c) a designated
25 opportunity zone within the State of Nebraska; or (d) a Nebraska county
26 with fewer than two hundred thousand inhabitants;

27 (16) Repayment amount means an amount equal to fifty percent of a
28 High-Wage Jobs and Capital Investment Creation Fund entity's investment
29 authority, minus an amount equal to the product of:

30 (a) The number of new full-time high-wage employment positions
31 reported to the High-Wage Jobs and Capital Investment Creation Fund for

1 each of the High-Wage Jobs and Capital Investment Creation Fund entity's
2 annual reports submitted pursuant to section 5 of this act; and

3 (b) The appropriate earned job factor; and

4 (17) Tax Commissioner means the Tax Commissioner of the State of
5 Nebraska.

6 Sec. 2. (1) The High-Wage Jobs and Capital Investment Creation Fund
7 is created. The fund shall be administered by the Tax Commissioner.

8 (2) The Tax Commissioner may receive money or other assets from any
9 source for credit to the fund. The Tax Commissioner shall direct the
10 investment of the fund. The Tax Commissioner shall remit such money and
11 other assets, along with any interest and earnings from the High-Wage
12 Jobs and Capital Investment Creation fund investments, to the State
13 Treasurer for credit to the High-Wage Jobs and Capital Investment
14 Creation Fund.

15 (3) Money in the High-Wage Jobs and Capital Investment Creation Fund
16 at the close of the fiscal year shall remain in the fund and shall not
17 lapse to the General Fund.

18 (4) The State Treasurer shall expend money from the High-Wage Jobs
19 and Capital Investment Creation Fund, upon appropriation, only to make
20 grants, loans, or other types of economic assistance to High-Wage Jobs
21 and Capital Investment Creation Fund entities in this state.

22 (5) Any grants, loans, or other types of economic assistance by the
23 High-Wage Jobs and Capital Investment Creation Fund shall be considered
24 subordinate to any third-party private capital in the fund, excluding the
25 required ten percent equity investment.

26 (6) Any money in the High-Wage Jobs and Capital Investment Creation
27 Fund available for investment shall be invested by the state investment
28 officer pursuant to the Nebraska Capital Expansion Act and the Nebraska
29 State Funds Investment Act.

30 Sec. 3. (1) Beginning one hundred eighty days after the
31 appropriation of state funds, and until ten years thereafter, the Tax

1 Commissioner shall accept applications for approval as a High-Wage Jobs
2 and Capital Investment Creation Fund entity. The application shall
3 include all of the following:

4 (a) The total investment authority sought by the applicant;

5 (b) A copy of the applicant's license showing that it or one of its
6 affiliates are rural business investment companies under 7 U.S.C. 2009cc
7 or a small business investment company under 15 U.S.C. 681, including a
8 certificate executed by an executive officer of the applicant attesting
9 that (i) such license remains in effect and has not been revoked and (ii)
10 at least one principal in a rural business investment company or a small
11 business investment company is, and must have been for at least four
12 years, an officer or employee of the applicant or an affiliate of the
13 applicant on the date the application is submitted;

14 (c) Evidence that, as of the date of the application, the High-Wage
15 Jobs and Capital Investment Creation Fund entity and its affiliates have
16 invested at least seventy-five million dollars in nonpublic companies
17 located in counties throughout the United States with populations of less
18 than fifty thousand inhabitants;

19 (d) Evidence that, as of the date of the application, the High-Wage
20 Jobs and Capital Investment Creation Fund entity and its affiliates have
21 received equity investments from investors who are not affiliates of the
22 applicant in an amount equal to at least seventy-five million dollars;
23 and

24 (e) A nonrefundable application fee of ten thousand dollars.

25 (2) The Tax Commissioner shall make application determinations
26 within sixty business days from the receipt of an administratively
27 complete application in the order in which the applications are received.
28 The fund shall consider applications received on the same day to have
29 been received simultaneously. The fund shall not approve more than thirty
30 million dollars in investment authority in a calendar year. If requests
31 for investment authority received simultaneously would result in the

1 limitation provided in this subsection being exceeded, the Tax
2 Commissioner shall proportionally allot the investment authority and
3 grants, loans, or other types of economic assistance among the approved
4 applications. Upon approval of an application, the Tax Commissioner and
5 the High-Wage Jobs and Capital Investment Creation Fund entity shall
6 execute a written agreement setting forth the terms and conditions of the
7 grants, loans, or other types of economic assistance.

8 (3) The Tax Commissioner may deny an application submitted under
9 this section only for the following reasons:

10 (a) The applicant does not satisfy all the criteria described in
11 this section; or

12 (b) The Tax Commissioner has already approved the maximum amount of
13 investment authority allowed under this section.

14 (4) If the Tax Commissioner denies an application, the applicant may
15 provide additional information to the Tax Commissioner within five days
16 after the notice of denial. The Tax Commissioner shall review and
17 reconsider the application and additional information within thirty days.
18 A reconsidered application shall retain the original date of receipt
19 provided under this section for purposes of priority.

20 (5) A High-Wage Jobs and Capital Investment Creation Fund entity
21 shall do all of the following:

22 (a) Within sixty days after receiving approval under this section,
23 collect private contributions equal to fifty percent of the High-Wage
24 Jobs and Capital Investment Creation Fund entity's investment authority;
25 and

26 (b) Within sixty-five days after receiving the approval issued under
27 this section, send to the Tax Commissioner documentation sufficient to
28 prove that the amounts described in subdivision (5)(a) of this section
29 have been collected;

30 (6) If a High-Wage Jobs and Capital Investment Creation Fund entity
31 fails to fully comply with subsection (5) of this section, the Tax

1 Commissioner's approval is forfeited and the Tax Commissioner shall first
2 award the corresponding investment authority to existing applicants who
3 received investment authority lower than the amount requested under this
4 section and then to new applicants.

5 (7) The Tax Commissioner shall disperse the grants, loans, or other
6 types of economic assistance to a High-Wage Jobs and Capital Investment
7 Creation Fund entity within twenty-one business days after receipt and
8 approval of the documentation described in subdivision (5)(b) of this
9 section.

10 Sec. 4. (1) The Tax Commissioner shall demand immediate repayment
11 of grants, loans, or other types of economic assistance issued under
12 sections 1 to 7 of this act if any of the following occurs with respect
13 to a High-Wage Jobs and Capital Investment Creation Fund entity before it
14 is certified to exit the program:

15 (a) A High-Wage Jobs and Capital Investment Creation Fund entity
16 does not invest at least forty percent of its investment authority in
17 growth investments in this state within one year after the closing date,
18 eighty percent of its investment authority in growth investments in this
19 state within two years after the closing date, and one hundred percent of
20 its investment authority in growth investments in this state within three
21 years after the closing date. One hundred percent of its investment
22 authority shall be invested in growth investments in qualified businesses
23 with principal business operations located in qualified locations. A
24 minimum of twenty-five percent of investment authority shall be invested
25 in counties with fewer than two hundred thousand inhabitants;

26 (b) A High-Wage Jobs and Capital Investment Creation Fund entity,
27 after satisfying subdivision (1)(a) of this section, fails to maintain
28 growth investments at the levels required by subdivision (1)(a) of this
29 section until the sixth anniversary of the closing date. For the purposes
30 of this subdivision, an investment is maintained even if the investment
31 is sold or repaid so long as the High-Wage Jobs and Capital Investment

1 Creation Fund entity reinvests an amount equal to the capital returned or
2 recovered by the High-Wage Jobs and Capital Investment Creation Fund
3 entity from the original investment, exclusive of any profits realized,
4 in other growth investments in this state within twelve months of the
5 receipt of that capital. Amounts received by a High-Wage Jobs and Capital
6 Investment Creation Fund entity pursuant to periodic repayments shall be
7 treated as continually invested in growth investments if the amounts are
8 reinvested in one or more growth investments by the end of the following
9 calendar year. A High-Wage Jobs and Capital Investment Creation Fund
10 entity is not required to reinvest capital returned from growth
11 investments after the fifth anniversary of the closing date, and those
12 growth investments shall be considered held continuously by the High-Wage
13 Jobs and Capital Investment Creation Fund entity through the sixth
14 anniversary of the closing date;

15 (c) A High-Wage Jobs and Capital Investment Creation Fund entity,
16 before exiting the program, makes a distribution or payment that results
17 in the High-Wage Jobs and Capital Investment Creation Fund entity having
18 less than one hundred percent of its investment authority invested in
19 growth investments in this state or available for investment in growth
20 investments and held in cash and other marketable securities; and

21 (d) The High-Wage Jobs and Capital Investment Creation Fund entity
22 makes a growth investment in a qualified business that directly or
23 indirectly through an affiliate owns, has the right to acquire an
24 ownership interest, makes a loan to, or makes an investment in a High-
25 Wage Jobs and Capital Investment Creation Fund entity, an affiliate of
26 the High-Wage Jobs and Capital Investment Creation Fund entity, or an
27 investor in the High-Wage Jobs and Capital Investment Creation Fund
28 entity. This section does not apply to investments in public-traded
29 securities. For purposes of this subdivision, a High-Wage Jobs and
30 Capital Investment Creation Fund entity will not be considered an
31 affiliate of a business solely because of its growth investment.

1 (2) No more than five million dollars in growth investments in a
2 qualified business, including growth investments in affiliates of the
3 qualified business, shall count toward the requirements of subdivisions
4 (1)(a) and (b) of this section.

5 (3) Before demanding repayment under this section, the Tax
6 Commissioner shall notify a High-Wage Jobs and Capital Investment
7 Creation Fund entity of the reasons for the pending repayment. The High-
8 Wage Jobs and Capital Investment Creation Fund entity shall have ninety
9 days from the date the notice was dispatched to correct any violation
10 outlined in the notice to the satisfaction of the Tax Commissioner and
11 avoid repayment of the grants, loans, or other types of economic
12 assistance.

13 (4) Twenty-five percent of the High-Wage Jobs and Capital Investment
14 Creation Fund must be invested in counties with one hundred fifty
15 thousand inhabitants or less.

16 Sec. 5. (1) A High-Wage Jobs and Capital Investment Creation Fund
17 entity shall submit an annual report to the Tax Commissioner on or before
18 the last day of February of each year until the High-Wage Jobs and
19 Capital Investment Creation Fund entity has exited the program. The
20 annual report shall provide documentation as to the High-Wage Jobs and
21 Capital Investment Creation Fund entity's growth investments and include
22 all of the following:

23 (a) A bank statement evidencing each growth investment;

24 (b) The name, location, industry, and North American Industry
25 Classification System code of each qualified business receiving a growth
26 investment, including either the determination letter set forth in
27 section 4 of this act or evidence that the business was a qualified
28 business at the time the growth investment was made;

29 (c) The number of new full-time high-wage employment positions and
30 the corresponding earned job factor at the qualified business in this
31 state which cannot be less than zero;

1 (d) The number of full-time high-wage employment positions at the
2 qualified business on the date of receipt of the initial growth
3 investment in this state; and

4 (e) Any other information required by the Tax Commissioner.

5 (2) Within sixty days after receipt of an annual report, the Tax
6 Commissioner shall provide written confirmation to the High-Wage Jobs and
7 Capital Investment Creation Fund entity of the new full-time high-wage
8 employment positions the High-Wage Jobs and Capital Investment Creation
9 Fund entity has been credited for that year.

10 (3) By the fifth business day after the third anniversary of the
11 closing date, a High-Wage Jobs and Capital Investment Creation Fund
12 entity shall submit a report to the Tax Commissioner evidencing its
13 compliance with the investment requirements of this act.

14 (4) The Tax Commissioner may adopt and promulgate rules and
15 regulations necessary to carry out sections 1 to 7 of this act.

16 (5) The Tax Commissioner shall electronically submit a report to the
17 Legislature on or before April 1, 2020, and each April 1 thereafter. The
18 annual report shall include all of the following:

19 (a) The name and number of all the High-Wage Jobs and Capital
20 Investment Creation Fund entities approved to participate in the program;

21 (b) The amount of investment authority awarded to each High-Wage
22 Jobs and Capital Investment Creation Fund entity;

23 (c) Any investments made by High-Wage Jobs and Capital Investment
24 Creation Fund entities, including the location of the investments; and

25 (d) Whether High-Wage Jobs and Capital Investment Creation Fund
26 entities are in compliance with this act.

27 Sec. 6. (1) The Tax Commissioner shall charge each High-Wage Jobs
28 and Capital Investment Creation Fund entity an annual fee in the amount
29 of one-half of one percent of the entity's investment authority.

30 (2) The initial annual fee is due and payable to the Tax
31 Commissioner within one business day of receipt of a grant, loan, or

1 other type of economic assistance. After the initial annual fee, an
2 annual fee is due and payable to the Tax Commissioner on or before that
3 last day of February of each year.

4 (3) An annual fee is not required after a High-Wage Jobs and Capital
5 Investment Creation Fund entity has exited the program.

6 (4) The Tax Commissioner shall remit fees collected under this
7 section to the State Treasurer for credit to the High-Wage Jobs and
8 Capital Investment Creation Fund.

9 Sec. 7. (1) On or after the sixth anniversary of the closing date,
10 a High-Wage Jobs and Capital Investment Creation Fund entity may exit the
11 program and no longer be subject to the provisions of sections 1 to 7 of
12 this act. The Tax Commissioner shall respond to an application to exit
13 the program within thirty days of receipt and include a calculation of
14 any repayment amount due.

15 (2) No distributions, other than those permitted by subdivision (1)
16 (b) of section 4 of this act, may be made with respect to the equity
17 interests of a High-Wage Jobs and Capital Investment Creation Fund entity
18 that exceed the sum of:

19 (a) The amount of equity capital invested into the High-Wage Jobs
20 and Capital Investment Creation Fund entity with respect to the equity
21 interests; and

22 (b) An amount equal to any projected increase in the federal or
23 state tax liability of holders of those interests related to the
24 ownership of the High-Wage Jobs and Capital Investment Creation Fund
25 entity until the entity has made payments to the High-Wage Jobs and
26 Capital Investment Creation Fund equal to the repayment amount.