

LEGISLATURE OF NEBRASKA
ONE HUNDRED SIXTH LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 1220

Introduced by Wayne, 13.

Read first time January 23, 2020

Committee:

- 1 A BILL FOR AN ACT relating to workforce development; to authorize High-
- 2 Wage Jobs and Capital Investment Creation Fund entities; to define
- 3 terms; to provide grants, loans, and economic assistance to such
- 4 entities; to create a fund; and to provide duties for the State
- 5 Treasurer and Tax Commissioner.
- 6 Be it enacted by the people of the State of Nebraska,

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

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

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

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

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

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

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

25 (d) Forty thousand dollars for factor 4 jobs with an hourly wage
26 rate of at least one hundred fifty percent of the Nebraska minimum wage
27 and which employ veterans, senior citizens, ex-criminal offenders,
28 citizens with disabilities, or citizens concurrently enrolled in a
29 Department of Health and Human Services assistance program and provide
30 the full benefits of health care, life insurance, and paid time off;

31 (4) Full-time high-wage employment position means an employment

1 position that is filled, pays a wage at least one hundred fifty percent
2 of the Nebraska minimum wage, and requires at least thirty-five hours of
3 work per week or any other period of time generally accepted by custom,
4 industry, or practice as full-time employment;

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

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

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

21 (a) The entity is a rural business investment company under 7 U.S.C.
22 2009cc or a small business investment company under 15 U.S.C. 681; and

23 (b) As of the date of application under section 3 of this act, the
24 entity and its affiliates have received equity investments from investors
25 who are not affiliates of the applicant in an amount equal to at least
26 seventy-five million dollars;

27 (8) Investment authority means the amount stated on the certificate
28 under section 3 of this act certifying a High-Wage Jobs and Capital
29 Investment Creation Fund entity. A High-Wage Jobs and Capital Investment
30 Creation Fund's investment authority shall be composed of equal amounts
31 of grants, loans, or other types of economic assistance by the High-Wage

1 Jobs and Capital Investment Creation Fund and private contributions;

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

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

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

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

29 (13) Private contributions means an investment of cash in a High-
30 Wage Jobs and Capital Investment Creation Fund entity to match
31 dollar-for-dollar the grants, loans, or other types of economic

1 assistance up to the investment authority of the High-Wage Jobs and
2 Capital Investment Creation Fund entity. A High-Wage Jobs and Capital
3 Investment Creation Fund entity's private contributions shall be composed
4 of not less than ten percent of equity investments;

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

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

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

24 (a) The number of new full-time high-wage employment positions
25 reported to the High-Wage Jobs and Capital Investment Creation Fund for
26 each of the High-Wage Jobs and Capital Investment Creation Fund entity's
27 annual reports submitted pursuant to section 5 of this act; and

28 (b) The appropriate earned job factor; and

29 (17) Tax Commissioner means the Tax Commissioner of the State of
30 Nebraska.

31 Sec. 2. (1) The High-Wage Jobs and Capital Investment Creation Fund

1 is created. The fund shall be administered by the Tax Commissioner.

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

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

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

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

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

24 Sec. 3. (1) Beginning one hundred eighty days after the
25 appropriation of state funds, and until ten years thereafter, the Tax
26 Commissioner shall accept applications for approval as a High-Wage Jobs
27 and Capital Investment Creation Fund entity. The application shall
28 include all of the following:

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

30 (b) A copy of the applicant's license showing that it or one of its
31 affiliates are rural business investment companies under 7 U.S.C. 2009cc

1 or a small business investment company under 15 U.S.C. 681, including a
2 certificate executed by an executive officer of the applicant attesting
3 that (i) such license remains in effect and has not been revoked and (ii)
4 at least one principal in a rural business investment company or a small
5 business investment company is, and must have been for at least four
6 years, an officer or employee of the applicant or an affiliate of the
7 applicant on the date the application is submitted;

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

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

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

19 (2) The Tax Commissioner shall make application determinations
20 within sixty business days from the receipt of an administratively
21 complete application in the order in which the applications are received.
22 The fund shall consider applications received on the same day to have
23 been received simultaneously. The fund shall not approve more than thirty
24 million dollars in investment authority in a calendar year. If requests
25 for investment authority received simultaneously would result in the
26 limitation provided in this subsection being exceeded, the Tax
27 Commissioner shall proportionally allot the investment authority and
28 grants, loans, or other types of economic assistance among the approved
29 applications. Upon approval of an application, the Tax Commissioner and
30 the High-Wage Jobs and Capital Investment Creation Fund entity shall
31 execute a written agreement setting forth the terms and conditions of the

1 grants, loans, or other types of economic assistance.

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

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

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

8 (4) If the Tax Commissioner denies an application, the applicant may
9 provide additional information to the Tax Commissioner within five days
10 after the notice of denial. The Tax Commissioner shall review and
11 reconsider the application and additional information within thirty days.
12 A reconsidered application shall retain the original date of receipt
13 provided under this section for purposes of priority.

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

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

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

24 (6) If a High-Wage Jobs and Capital Investment Creation Fund entity
25 fails to fully comply with subsection (5) of this section, the Tax
26 Commissioner's approval shall be withdrawn and the Tax Commissioner shall
27 first award the corresponding investment authority to existing applicants
28 who received investment authority lower than the amount requested under
29 this section and then to new applicants.

30 (7) The Tax Commissioner shall disperse the grants, loans, or other
31 types of economic assistance to a High-Wage Jobs and Capital Investment

1 Creation Fund entity within twenty-one business days after receipt and
2 approval of the documentation described in subdivision (5)(b) of this
3 section.

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

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

20 (b) A High-Wage Jobs and Capital Investment Creation Fund entity,
21 after satisfying subdivision (1)(a) of this section, fails to maintain
22 growth investments at the levels required by subdivision (1)(a) of this
23 section until the sixth anniversary of the closing date. For the purposes
24 of this subdivision, an investment is maintained even if the investment
25 is sold or repaid so long as the High-Wage Jobs and Capital Investment
26 Creation Fund entity reinvests an amount equal to the capital returned or
27 recovered by the High-Wage Jobs and Capital Investment Creation Fund
28 entity from the original investment, exclusive of any profits realized,
29 in other growth investments in this state within twelve months of the
30 receipt of that capital. Amounts received by a High-Wage Jobs and Capital
31 Investment Creation Fund entity pursuant to periodic repayments shall be

1 treated as continually invested in growth investments if the amounts are
2 reinvested in one or more growth investments by the end of the following
3 calendar year. A High-Wage Jobs and Capital Investment Creation Fund
4 entity is not required to reinvest capital returned from growth
5 investments after the fifth anniversary of the closing date, and those
6 growth investments shall be considered held continuously by the High-Wage
7 Jobs and Capital Investment Creation Fund entity through the sixth
8 anniversary of the closing date;

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

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

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

30 (3) Before demanding repayment under this section, the Tax
31 Commissioner shall notify a High-Wage Jobs and Capital Investment

1 Creation Fund entity of the reasons for the pending repayment. The High-
2 Wage Jobs and Capital Investment Creation Fund entity shall have ninety
3 days from the date the notice was dispatched to correct any violation
4 outlined in the notice to the satisfaction of the Tax Commissioner and
5 avoid repayment of the grants, loans, or other types of economic
6 assistance.

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

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

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

18 (b) The name, location, industry, and North American Industry
19 Classification System code of each qualified business receiving a growth
20 investment, including either the determination notice set forth in
21 section 4 of this act or evidence that the business was a qualified
22 business at the time the growth investment was made;

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

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

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

30 (2) Within sixty days after receipt of an annual report, the Tax
31 Commissioner shall provide written confirmation to the High-Wage Jobs and

1 Capital Investment Creation Fund entity of the new full-time high-wage
2 employment positions the High-Wage Jobs and Capital Investment Creation
3 Fund entity has been credited for that year.

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

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

10 (5) The Tax Commissioner shall electronically submit a report to the
11 Legislature on or before April 1, 2021, and each April 1 thereafter. The
12 annual report shall include all of the following:

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

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

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

19 (d) Whether High-Wage Jobs and Capital Investment Creation Fund
20 entities are in compliance with sections 1 to 7 of this act.

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

24 (2) The initial annual fee is due and payable to the Tax
25 Commissioner within one business day of receipt of a grant, loan, or
26 other type of economic assistance. After the initial annual fee, an
27 annual fee is due and payable to the Tax Commissioner on or before the
28 last day of February of each year.

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

31 (4) The Tax Commissioner shall remit fees collected under this

1 section to the State Treasurer for credit to the High-Wage Jobs and
2 Capital Investment Creation Fund.

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

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

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

16 (b) An amount equal to any projected increase in the federal or
17 state tax liability of holders of those interests related to the
18 ownership of the High-Wage Jobs and Capital Investment Creation Fund
19 entity until the entity has made payments to the High-Wage Jobs and
20 Capital Investment Creation Fund equal to the repayment amount.