

## LEGISLATIVE BILL 620

Approved by the Governor May 25, 2001

Introduced by Kristensen, 37

AN ACT relating to revenue and taxation; to amend sections 58-529 and 77-4932, Reissue Revised Statutes of Nebraska, and section 49-801.01, Revised Statutes Supplement, 2000, as amended by section 1, Legislative Bill 122, Ninety-seventh Legislature, First Session, 2001; to adopt the Invest Nebraska Act; to change powers of the Department of Revenue; to harmonize provisions; to provide severability; to repeal the original sections; and to declare an emergency.

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

Section 1. Sections 1 to 44 of this act shall be known and may be cited as the Invest Nebraska Act.

Sec. 2. It is the policy of this state to enact appropriate legislation to encourage new businesses to relocate to and existing businesses to expand in Nebraska and to provide appropriate inducements to encourage new and existing businesses to do so. The goals of the policy, to be achieved in a manner that is both fiscally sound and effective, are (1) to aid in the economic and population growth of the state and (2) to assist in the creation of better jobs for the residents of the state.

Sec. 3. For purposes of the Invest Nebraska Act, the definitions found in sections 4 to 30 of this act shall be used.

Sec. 4. Any term defined in the Nebraska Revenue Act of 1967 and used in the Invest Nebraska Act has the same meaning in the Invest Nebraska Act unless the context requires a different meaning.

Sec. 5. Agreement means the agreement between the company and the state.

Sec. 6. Base year means the year immediately preceding the year in which the start date occurs.

Sec. 7. Base-year employee means any individual who was employed in Nebraska and subject to the Nebraska income tax on compensation received from the company or its predecessors during the base year and who is employed at the project.

Sec. 8. Board means the Invest Nebraska Board, which shall consist of the Governor, the State Treasurer, and the chairperson of the Nebraska Investment Council.

Sec. 9. Company means (1) any person subject to sales and use taxes and either the income tax imposed by the Nebraska Revenue Act of 1967 or the franchise tax under sections 77-3801 to 77-3807, (2) any corporation, partnership, limited liability company, or joint venture that is or would otherwise be a member of the same unitary group, if incorporated, which is, or whose partners, members, or owners are, subject to such taxes, and any other partnership, limited liability company, subchapter S corporation, or joint venture when the partners, owners, shareholders, or members are subject to such taxes, and (3) any cooperative exempt from such taxes under section 521 of the Internal Revenue Code of 1986, as amended.

Sec. 10. Company training program means any program developed or operated by or for the benefit of the company which screens, trains, or educates recruits, potential employees, or actual employees of the company, or any combination thereof, in order to enable the recruits or employees to perform employment activities at the project and includes recruitment, screening, customized training, job-specific training, on-the-job training, and generalized training programs.

Sec. 11. Company workplace safety program means any program used by the company to further the workplace safety of employees employed at the project.

Sec. 12. Compensation means the wages and other payments subject to withholding for federal income tax purposes.

Sec. 13. Educational institution training program means any training program established by or conducted by any public or private educational institution that provides training or education for recruits, potential employees, or actual employees of the company, or any combination thereof, with regard to employment or potential employment at the project.

Sec. 14. Employee means a person employed at the project. An employee of a qualified employee leasing company shall be deemed to be an employee of the client-lessee if the employee performs services for the client-lessee. A qualified employee leasing company shall provide the

Department of Revenue access to the records of employees leased to the client-lessee.

Sec. 15. Employee benefit program means health and dental benefits, dependent care, life insurance, disability insurance, or relocation costs provided to or for the benefit of employees, which programs are qualified under the Internal Revenue Code of 1986, as amended.

Sec. 16. (1) Entitlement period is ten years, meaning the year during which the required increases in employment and investment were met or exceeded or that meets the conditions in subsection (2) of this section and the next one hundred eight months.

(2) Solely for the purpose of determining the first year of the entitlement period, if before the end of a year a company has reached the required level of new investment and has created the number of new jobs at the project equal to at least the applicable required level of new employment, but has not yet reached the required number of new employees because such employees have not been employed at the project yet for a full year, then the company may elect on its tax return for such year to be considered to have met the required levels of employment and investment during such year.

Sec. 17. Equivalent employees means the number of employees computed by dividing the total hours paid in a year by the product of forty times the number of weeks in a year.

Sec. 18. Genetic information means information about a gene, gene product, or inherited characteristic derived from a genetic test.

Sec. 19. Genetic test means the analysis of human DNA, RNA, and chromosomes and those proteins and metabolites used to detect heritable or somatic disease-related genotypes or karyotypes for clinical purposes. A genetic test must be generally accepted in the scientific and medical communities as being specifically determinative for the presence, absence, or mutation of a gene or chromosome in order to qualify under this definition. Genetic test does not include a routine physical examination or a routine analysis, including a chemical analysis, of body fluids unless conducted specifically to determine the presence, absence, or mutation of a gene or chromosome.

Sec. 20. Investment means the value of qualified property incorporated into or used at the project after the date of the application. For qualified property owned by the company, the value is the original cost of the property. For qualified property rented by the company, the value is the average net annual rent multiplied by the number of years of the lease for which the company was originally bound, not to exceed ten years or the end of the third year after the entitlement period, whichever is earlier. The rental of land included in and incidental to the leasing of a building may be included by the company in the computation.

Sec. 21. Nebraska average annual wage means the most recent average annual wage paid by all employers in this state for the most recent calendar year as reported by the Department of Labor on or before the July 1 immediately prior to the beginning of the particular year the company applied for benefits for which such determination applies.

Sec. 22. Number of new employees means the excess of the number of equivalent employees employed at the project during a year over the number of equivalent employees during the base year.

Sec. 23. Project means a project described in the Invest Nebraska Act and approved by the board.

Sec. 24. Project year means any year or portion of a year during the entitlement period of the project.

Sec. 25. Qualified business means any business engaged in the activities listed in subdivisions (1) through (5) of this section or in the storage, warehousing, distribution, transportation, or sale of tangible personal property. Qualified business does not include any business activity in which eighty percent or more of the total sales are sales to the ultimate consumer of food prepared for immediate consumption or are sales to the ultimate consumer of tangible personal property which is not assembled, fabricated, manufactured, or processed by the company or used by the purchaser in any of the following activities:

(1) The conducting of research, development, or testing for scientific, agricultural, animal husbandry, food product, or industrial purposes;

(2) The performance of data processing, telecommunication, insurance, or financial services. Financial services, for purposes of this subdivision, shall only include financial services provided by a financial institution subject to tax under sections 77-3801 to 77-3807 or any person or entity licensed by the Department of Banking and Finance or the Securities and Exchange Commission;

(3) The assembly, fabrication, manufacture, or processing of tangible personal property;

(4) The administrative management of any activities, including headquarter facilities, relating to such activity; or

(5) Any combination of the activities listed in this section.

Sec. 26. Qualified employee leasing company means a company which places all employees of a client-lessee on its payroll and leases such employees to the client-lessee on an ongoing basis for a fee and, by written agreement between the employee leasing company and a client-lessee, grants to the client-lessee input into the hiring and firing of the employees.

Sec. 27. Qualified property means any tangible property of the type subject to depreciation, amortization, or other recovery under the Internal Revenue Code of 1986, as amended, or the components of such property that will be located and used at the project. Qualified property does not include aircraft, barges, motor vehicles, railroad rolling stock, or watercraft or property that is rented by the qualified company to another person.

Sec. 28. Related persons means any corporations, partnerships, limited liability companies, or joint ventures which are or would otherwise be members of the same unitary group, if incorporated, or any persons who are considered to be related persons under section 267(b) and (c) of the Internal Revenue Code of 1986, as amended, or section 707(b) of the code.

Sec. 29. Start date means the first date after the date of the application on which a qualified investment, that is either all or a part of a building in the project, is placed in service by the owner. For purposes of this definition, placed in service has the same meaning as that used for the Internal Revenue Code of 1986, as amended.

Sec. 30. Year means the taxable year of the company.

Sec. 31. (1) The policy of the state in adopting the Invest Nebraska Act is to encourage new businesses to relocate to and existing businesses to expand in Nebraska and to provide appropriate inducements to encourage new and existing businesses to do so. Depending on the nature of the company and its employees, the state recognizes the inducements contained in the act may be more appropriate and administratively more convenient and efficient for the state, the company, and the employees, if the wage benefit credit is charged against the company's income tax or the company's withholding tax rather than individually computed and used against each employee's income tax. Therefore, if the company uses the wage benefit credit for company training programs, employee benefit programs, educational institution training programs, or company workplace safety programs, or any combination thereof, as determined by the company as otherwise provided for in the act and if the board has approved the project application, then after entering into an agreement with the state, the company shall be allowed a wage benefit credit to be determined, used, and calculated as provided in this section.

(2) In order to help relieve the burden to government and to help promote the general welfare of citizens, the wage benefit credit used by the company shall be paid or applied by the company for company training programs, employee benefit programs, educational institution training programs, or company workplace safety programs, or any combination thereof, as determined by the company. Such use of the wage benefit credit is declared as a matter of policy to be for a public purpose. Nothing in this section shall be construed to limit the right of an employee or employees subject to a collective bargaining agreement to negotiate relative to such programs.

(3) The wage benefit credit shall be an amount equal to the percentage specified in subsection (4) of this section multiplied by the amount of the total compensation paid during each project year to employees of the company while employed at the project, other than base-year employees, who have been paid compensation for such year by the company of at least the minimum amount required for such project under section 36 of this act.

(4) The percentage used to determine the wage benefit credit shall be:

<u>If the average compensation for the project year is over</u>	<u>But not over</u>	<u>Then the credit percentage shall be</u>
<u>\$0</u>	<u>\$20,000</u>	<u>0%</u>
<u>\$20,000</u>	<u>\$30,000</u>	<u>3%</u>
<u>\$30,000</u>	<u>\$40,000</u>	<u>4%</u>
<u>\$40,000</u>		<u>5%</u>

For purposes of determining the credit percentage for each respective project year, average compensation means the total compensation paid during the project year to all employees employed at the project regardless of their level of compensation divided by the total number of equivalent employees employed at the project during the project year

regardless of their level of compensation.

(5) The wage benefit credit shall be allowed for each project year.

(6) The wage benefit credit shall be established by filing the forms required by the Tax Commissioner with the income tax return for the year. The credit may be used to reduce the company's Nebraska income tax liability.

(7) The company shall also be entitled to use all or such part as determined by the company of the wage benefit credits previously established under this section to reduce the company's income tax withholding employer or payor tax liability under section 77-2756 or 77-2757 for succeeding years to the extent such liability is attributable to employees who are employed at the project covered by the agreement other than base-year employees. To the extent of the credit so claimed, such withholding shall not constitute public funds or state tax revenue and shall not constitute a trust fund or be owned by the state. In order to help achieve the public purposes of the Invest Nebraska Act, the use by the company of the wage benefit credits to reduce such income tax withholding tax liability shall not change the amount that otherwise would be reported by the company 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.

(8) The use of the wage benefit credit total as a credit against income tax withholding tax liability for the project per year shall not exceed five percent of the total compensation paid by the company in the year to all employees, other than base-year employees, for services rendered in connection with the project. If such use of the wage benefit credit exceeds such amount, the excess shall be returned to the Department of Revenue in the manner provided in section 77-2756.

(9) The credits shall be applied in the order in which they were first allowed. Any decision on how part of the credit is applied shall not limit how the remaining credit can be applied under this section. The credit may be carried over until fully utilized, except that the credit may not be carried over more than eight years after the end of the entitlement period. If a credit is subsequently recaptured under section 38 of this act, the credit shall be treated as if it had never been allowed.

(10) The wage benefit credit shall not be transferable, except that any credit to be taken against the income tax liability of the company and allowable to a partnership, a limited liability company, a subchapter S corporation, a cooperative, a joint venture, or an estate or trust may be distributed to the partners, members, shareholders, patrons, owners, or beneficiaries in the same manner as income is distributed for use against their income tax liabilities.

Sec. 32. Interest shall not be allowable on any refunds paid because of benefits earned under the Invest Nebraska Act.

Sec. 33. (1) A company which has signed an agreement under section 36 of this act may receive, in lieu of any wage benefit credit otherwise allowed by the Invest Nebraska Act, the incentive provided in this section if the agreement is for a project which will result in the investment in qualified property of at least two hundred million dollars and the hiring of at least five hundred new employees. Such two hundred million dollar investment and hiring of at least five hundred new employees shall be considered the required levels of investment and employment for this section and for the recapture of the incentives of this section only.

(2) When the company has met the required levels of employment and investment contained in this section, the company shall be entitled to either the wage benefit credit provided in section 31 of this act or an investment tax credit equal to fifteen percent of the investment made in qualified property at the project. The company shall be required to state which option it will seek benefits under in the application for benefits under the act.

(3) The investment tax credit prescribed in this section shall be allowable for investments made during each year of the entitlement period that the company is at or above the required levels of employment and investment. The credit shall also be allowable during the first year of the entitlement period for investment in qualified property at the project after the date of the application and before the required levels of employment and investment were met.

(4) The investment tax credit prescribed in this section shall be established by filing the forms required by the Tax Commissioner with the income tax return for the year. The credits may be used to reduce the company's Nebraska income tax liability. The credits shall be applied in the order in which they were first allowed. Any decision on how part of the

credit is applied shall not limit how the remaining credit could be applied under this section. The credit may be carried over until fully utilized, except that the credit may not be carried over more than eight years after the end of the entitlement period. If a credit is subsequently recaptured under section 38 of this act, the credit shall be treated as if it had never been allowed.

(5) The investment tax credit shall not be transferable, except that any credit to be taken against the income tax liability of the company and allowable to a partnership, a limited liability company, a subchapter S corporation, a cooperative, a joint venture, or an estate or trust may be distributed to the partners, members, shareholders, patrons, owners, or beneficiaries in the same manner as income is distributed for use against their income tax liabilities.

Sec. 34. (1) In order for the company to be eligible for the wage benefit credit or the investment tax credit, as applicable, the company shall file an application for an agreement with the board.

(2) The application shall contain:

(a) The exact name of the company and any related companies which will be included in the project;

(b) A statement describing, in detail, the nature of the company's business, including the products sold and respective markets;

(c) A detailed narrative that describes the proposed project, including how the company intends to attain and maintain the job and investment requirements and the expected start date for the project;

(d) A request that the company be considered for approval under the Invest Nebraska Act;

(e) If more than one location within this state is to be involved in the project, sufficient documentation to show that the employment and investment at the different locations are interdependent parts of the project plan;

(f) A copy of the company's authorization for the project;

(g) A copy of the company's most recent financial report, federal income tax return, Nebraska income tax return, Nebraska reconciliation of income tax withheld, and Nebraska sales and use tax identification number;

(h) The expected number of base-year employees, the expected number of new employees, the expected timing of the hiring of the new employees, the anticipated timing and amounts of new investment in buildings and equipment, and the average salaries expected by category for the new employees to be employed at the project;

(i) A copy of the written policy of the company which prohibits the company from requiring as a condition of employment or promotion at the project that an employee or an individual applying for employment at the project submit to a genetic test or provide genetic information outside of the scope of normal blood testing; and

(j) A five-thousand-dollar nonrefundable application fee payable to the Department of Revenue. The fee shall be remitted to the Invest Nebraska Fund, which fund is 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.

(3) Any representations made by the company, or the company's representatives, during the meeting before the board shall become a part of the application. The application and all supporting information and information received during a closed session of the board shall be confidential except for the name of the company, the location of the project, the amounts of increased employment and investment, and whether the application has been approved. The confidential information contained in an application shall be discussed only in a closed session of the board, unless the company waives its right to confidentiality in writing. The members of the board will respect the confidentiality of the information received and will not disclose any confidential information regarding the company to any person other than the representatives of the company, the Tax Commissioner, or other employees of the Department of Revenue, except as specifically provided in the Invest Nebraska Act. Any applications, or parts of applications, provided to the members of the board shall be numbered copies and shall be delivered to the offices of the board members in a double envelope. All applications, or parts of applications, shall be returned to the department at the conclusion of the meeting.

Sec. 35. (1) Any two members of the board shall constitute a quorum for the transaction of the business of the board. The Governor shall be the chairperson of the board. The address of the board is the Department of Revenue.

(2)(a) The Tax Commissioner is designated as the secretary of the

board with the following responsibilities: The scheduling of a meeting when an application is to be considered; the publishing of the notices of the meeting according to the Invest Nebraska Act; the keeping of the minutes of the meetings and other records of the board; the notification of the applicant of the decision of the board; the receiving and entering into the record any written testimony concerning an application; and the consenting on behalf of the board to an extension of time within which the board is to make a decision.

(b) The Tax Commissioner shall give at least ten days' notice of meetings by publication in at least six newspapers across the state. The Tax Commissioner shall also give notice of meetings by publication in a newspaper that is local to the project area. A copy of the notice shall be posted in the State Capitol and a state office building in Lincoln. A copy of the notice shall be sent to the company. A news release shall be distributed by the Tax Commissioner.

(c) The Tax Commissioner shall notify the company in writing as to whether the board has approved or not approved the application. The board shall decide and such notice shall be mailed within sixty days after receipt of the application, unless such time is extended by mutual written consent of the Tax Commissioner and the company.

(3) The meeting of the board shall be recorded by a court reporter. The closed portion of the meeting shall be also recorded, and the record of that portion shall be sealed. The only persons who may attend the closed session of the board are the members of the board, the representatives of the company, other persons invited at the request of the company, the Tax Commissioner, other employees of the Department of Revenue, and the court reporter. Other persons, as necessary, may be invited by the board for the purpose of providing specific, confidential information. However, they may only attend the portion of the meeting necessary to provide the information requested by the board.

Sec. 36. (1) The board shall determine whether to approve the company's application by majority vote based on its determination as to whether the project will sufficiently help enable the state to accomplish the purposes of the Invest Nebraska Act. The board shall be governed by and shall take into consideration all of the following factors in making its determination:

(a) The timing, number, wage levels, employee benefit package, and types of new jobs to be created by the project;

(b) The type of industry in which the company and the project would be engaged;

(c) The timing, amount, and types of investment in qualified property to be made at the project; and

(d) Whether the board believes the project would occur in this state regardless of whether the application was approved.

(2) The weight given to each factor shall be determined by each board member individually for each application. The decision of the board shall be made in open meeting and is not confidential.

(3) A project shall be considered eligible under the act and may be approved by the board only if the application defines a project consistent with the purposes contained in section 2 of this act in one or more qualified business activities within this state that will result in (a) the investment in qualified property of at least ten million dollars and the hiring of a number of new employees of at least twenty-five. The investment and new employees for such project shall count towards attaining and maintaining such thresholds only if the qualified property is located in, and the employee's principal place of employment for the company is located in, one or more Nebraska counties having a population of less than one hundred thousand individuals as of the end of the base year. For this purpose, the population shall be conclusively determined by the Department of Revenue, (b) the investment in qualified property of at least fifty million dollars and the hiring of a number of new employees of at least five hundred, (c) the investment in qualified property of at least one hundred million dollars and the hiring of a number of new employees of at least two hundred fifty, or (d) the investment in qualified property of at least two hundred million dollars and the hiring of a number of new employees of at least five hundred.

(4) The new investment and employment shall occur within seven years, meaning by the end of the sixth year after the end of the year the application was filed, and shall be maintained for the entire entitlement period. These thresholds shall constitute the required levels of employment and investment for purposes of the act.

(5)(a) An individual employed by the company, other than a base-year employee, shall be considered an employee for purposes of attaining

and maintaining the required number of new employees and shall be considered an employee whose compensation is included in the calculation of the wage benefit credit only if the compensation paid by the company to such employee for the year is (i) for companies qualifying under the ten million dollar investment and twenty-five new employee threshold under subdivision (3)(a) of this section, at least one hundred percent of the Nebraska average annual wage, (ii) for companies qualifying under the fifty million dollar investment and five hundred new employee threshold under subdivision (3)(b) of this section or the one hundred million dollar investment and two hundred fifty new employee threshold under subdivision (3)(c) of this section, at least one hundred ten percent of the Nebraska average annual wage; and (iii) for the companies applying under the two hundred million dollar investment and five hundred new employee threshold of subdivision (3)(d) of this section, at least one hundred twenty percent of the Nebraska average annual wage.

(b) For the purposes of subdivision (a) of this subsection, compensation paid by the company to such employee for the year shall be the amount paid for the entire year for regular hours worked, not including overtime, bonuses, or any other irregular payments. If the employee works for less than a year, the compensation paid will be annualized solely for the purpose of comparison with the Nebraska average annual wage.

(6) If the project application is approved by the board, the company 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 company shall agree to complete the project and the state shall designate the approved plans of the company as a project and, in consideration of the company's agreement, agree to allow the wage benefit credit or the investment tax credit, as applicable, as provided for in the act. The application, and all supporting documentation, to the extent approved, shall be deemed a part of the agreement. The agreement shall contain such terms and conditions as the board shall specify in order to carry out the legislative purposes of the act. The agreement shall contain provisions to allow the Department of Revenue to verify that the required levels of employment and investment have been attained and maintained. The agreement shall contain provisions to require verification that the required levels have been attained before any credits are used. The agreement shall contain such other conditions or requirements, if any, for the company as established by the department to carry out the purposes of the act.

(7) Any investment or employment which is eligible for benefits under the Quality Jobs Act shall not be included in a project under the Invest Nebraska Act. A project under the Invest Nebraska Act may involve the same location as another project under the Invest Nebraska Act or under the Quality Jobs Act, except that 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 tax incentives. When projects overlap and the project application does not otherwise clearly specify, the company shall specify in which project the employment and investment belongs. Any employment or investment which is eligible for benefits under the Invest Nebraska Act may also be included in, and create incentives for, a project under the Employment and Investment Growth Act, the Employment Expansion and Investment Incentive Act, and the Rural Economic Opportunities Act, to the extent otherwise allowable under such respective acts.

(8) In order to provide the degree of certainty necessary to enable a project to proceed, and notwithstanding any provision of Nebraska statute or common law to the contrary, to the extent any such right of appeal or challenge otherwise exists, no appeal or challenge of the board's decision by any person shall be filed after the expiration of thirty days after the board's decision.

Sec. 37. A company entering into an agreement under the Invest Nebraska Act is prohibited from requiring as a condition of employment or promotion at the project that an employee or an individual applying for employment at the project submit to a genetic test or provide genetic information outside the scope of normal blood testing.

Sec. 38. (1) If the company fails to utilize a project in a qualified business at or above the required levels of employment and investment required in the Invest Nebraska Act for the entire entitlement period, a portion of the wage benefit credit or investment tax credit shall be recaptured directly by the state from the company or shall be disallowed. In no event shall any wage benefit credit be required to be paid back directly or indirectly by the employees, but instead shall be paid by the company.

(2) In the case of a company which has failed to maintain the project at the required levels of employment and investment for the entire entitlement period the recapture or disallowance shall be as follows: (a) No

wage benefit credits or investment tax credits shall be allowed to the company for the actual year or years in which the required levels of employment or investment were not maintained; (b) for wage benefit credits or investment tax credits used, one-tenth of the credits shall be recaptured from the company for each year the required levels of employment or investment were not maintained; and (c) as to wage benefits credits or investment tax credits remaining at the end of the entitlement period, one-tenth of the credits shall be disallowed to the company for each year the required levels of employment or investment were not maintained in previous years.

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

(b) In the case of a company which has failed to maintain the project at the required levels of employment and investment for the entire entitlement period, interest accrues from the due date for the return on which the credits being recaptured were used.

(c) Penalties for underpayment of withholding or income tax, as appropriate, do not accrue unless repayment is not made within ninety days after the requirement for recapture or disallowance becomes known or should have become known to the company.

(4) The recapture or disallowance required by this section may be waived by the board if the board finds the failure to attain or maintain the required levels of employment or investment was caused by unavoidable circumstances such as an act of God or national emergency.

(5) When recapture occurs with regard to any partnership, limited liability company, subchapter S corporation, joint venture, cooperative, or estate or trust, the partnership, limited liability company, subchapter S corporation, joint venture, cooperative, or estate or trust shall be liable for payment of the required recapture.

Sec. 39. A project covered by an agreement may be transferred in its entirety by sale or lease to another person or in an acquisition of assets qualifying under section 381 of the Internal Revenue Code of 1986, as amended. The acquiring persons shall be entitled to the same benefits as the original company and shall be subject to the same obligations, including recapture and disallowance of benefits received either before or after the transfer, as the original company would have been if the project was not transferred.

Sec. 40. The following transactions or activities shall not create an investment, result in an increase in the number of new employees, or create any wage benefit credits or investment tax credits under the Invest Nebraska Act except as specifically allowed by this section:

(1) The acquisition of a business located in this state which is continued by the company and which was operated in this state during the three hundred sixty-six days prior to the date of application or the date of acquisition, whichever is later. All of the employees of the acquired business during such period shall be considered base-year employees. Any investment in the acquisition of such business shall be deemed to have been made before the date of application;

(2) The moving of a business from one location in this state to another, which business was operated in this state during the three hundred sixty-six days prior to the date of application. All employees of the business during such three hundred sixty-six days who become employed at the project shall be deemed base-year employees;

(3) The purchase or lease of any property which was previously owned by the company or a related person. The first purchase by either the company or a related person shall be treated as investment if the item was first placed in service in this state after the date of the application;

(4) The renegotiation of any lease in existence on the date of application which does not materially change any of the terms of the lease, other than the expiration date, shall be presumed to be a transaction entered into for the purpose of generating benefits under the act and shall not be allowed in the computation of the meeting of any required levels of investment under the agreement;

(5) Any purchase or lease of property from a related person, except that the company will be allowed benefits under the act to which the related person would have been entitled on the purchase or lease of the property if the related person was considered the company; and

(6) Any transaction entered into primarily for the purpose of receiving benefits under the act which is without a business purpose and does not result in increased economic activity in this state.

Sec. 41. The Department of Revenue, in consultation with the Governor and the Department of Economic Development, may, but is not required to, adopt and promulgate all rules and regulations determined by the Tax Commissioner in his or her discretion to be necessary or appropriate to carry out the purposes of the Invest Nebraska Act.

Sec. 42. (1) The Department of Revenue shall submit an annual report to the Legislature no later than March 15 each year. The report shall list (a) the agreements which have been signed during the previous calendar year, (b) the agreements which are still in effect, (c) the identity of each company, and (d) the location of each project.

(2) The report shall also state by industry group (a) the amount of wage benefit credits and investment tax credits allowed under the Invest Nebraska Act, (b) the number of direct jobs created at the projects, (c) the amount of direct capital investment under the act, (d) the estimated wage levels of jobs created by the companies at the projects, (e) the estimated indirect jobs and investment created on account of the projects, and (f) the projected future state and local revenue gains and losses from all revenue sources on account of the direct and indirect jobs and investment created on account of the projects.

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

Sec. 43. (1) Except as provided in subsection (2) of this section, there shall be no project applications filed on or after June 1, 2005, without further authorization of the Legislature, except that all project applications and all project agreements pending, approved, or entered into before such date shall continue in full force and effect.

(2) There shall be no project applications for projects described in subdivision (3)(d) of section 36 of this act filed on or after October 1, 2002, without further authorization of the Legislature, except that all such project applications and all such project agreements pending, approved, or entered into before such date shall continue in full force and effect.

Sec. 44. (1) By January 1, 2005, and each January 1 every five years thereafter for so long as there are companies that have qualified for benefits and remain within the entitlement period, there shall be an audit to determine compliance with the Invest Nebraska Act. The Tax Commissioner shall contract with a qualified independent accounting firm to conduct the audit. The cost of the audit shall be paid from funds appropriated to the Department of Revenue by the Legislature. Such cost shall include, in addition to the fees and costs of such independent firm, the incremental costs to the department to comply with this section, as determined by the department. If a qualified independent accounting firm cannot be located or engaged to conduct such audit, then such audit shall instead be performed by the department. A qualified independent firm shall be a firm that meets all of the following requirements: (a) The firm must be an accounting firm employing or comprised of at least ten certified public accountants who are licensed under the Public Accountancy Act to practice accounting and auditing in Nebraska; (b) the firm, at the time of the beginning of such audit, and for the period of at least twenty-four months before such audit commences, has not performed any services for any of the companies that at such time have filed applications under the Invest Nebraska Act, and the firm must agree not to engage in and to withdraw from representing any companies that file applications after such audit commences and before the audit report is issued; (c) the firm must have executed such audit contract as required by the Tax Commissioner, and (d) the firm, and all such accountants and personnel of such firm who will be involved in the audit, must have executed such confidentiality and nondisclosure agreements as required by the Tax Commissioner. In hiring such firm, the Tax Commissioner shall comply with all Nebraska laws pertaining to the selection and hiring of outside private sector services.

(2) The purpose of the audit is to examine information collected by the department in order to determine:

(a) The extent the data collected from the companies receiving benefits is verified;

(b) The extent to which the projects receiving benefits from the act are in compliance with the act initially and throughout the entitlement period;

(c) Whether the requirements of the act regarding the investment threshold have been attained and maintained by the companies;

(d) Whether and to what extent new employees are added by the companies to their workforce and employed at the project locations;

(e) Whether and to what extent the new jobs created meet the minimum compensation requirements of the act;

(f) The industry or industries in which the new jobs are created,

by North American Industry Classification System Code;

(g) The extent to which the minimum new job threshold of the act has been attained and maintained by the companies;

(h) By category of spending, what is purchased by the companies that is claimed as qualified investments; and

(i) Gross sales from output of the project if reasonably determinable.

(3) After the audit is conducted, and on or before January 1, 2005, and each January 1 every five years thereafter, the auditor shall issue a report to the Legislature and Governor detailing the results of the audit. The report shall be presented using aggregated information and other techniques so as not to reveal confidential information that allows identification of the company. The report shall not be issued until the Tax Commissioner has confirmed in writing that the report does not reveal any confidential information that allows identification of the company. For purposes of this section, confidential information includes all information that is (a) referred to as confidential in section 34 of this act, (b) restricted from disclosure or treated as confidential under any federal or state law, or (c) provided by the company to the department in connection with the company's project under the act. The report shall detail all assumptions, methods, or models that were used in performing the analysis and shall report information by industry group or expenditure category so that further analysis can be performed. The firm shall have access to all records of the department with regard to the credits granted under the act and the companies receiving such credits. Such records shall remain confidential in the hands of the firm conducting the audit and shall not be revealed to any person that is not employed by the department or the firm conducting the audit. No officer or employee of the firm conducting the audit shall disclose any information to any other person if such information is protected by federal or state confidentiality laws. Notwithstanding any other provision of this section to the contrary, neither the independent accounting firm nor any of its personnel shall be provided by the department with any confidential information except to the extent and under conditions when the department is permitted without penalty to do so under applicable federal or state laws.

(4) All information provided by the department to the independent accounting firm shall be examined only on the premises of the department and shall be stored in a secure place. The firm shall make no copies of such information. Any qualified independent accounting firm, or any personnel of the firm, which violates this section shall be guilty of a Class IV felony and, in the discretion of the court, may be assessed the costs of prosecution.

(5) Nothing in this section shall be construed to require the company to provide, or require the department to obtain from the company, any information beyond that required as part of the application or beyond that required by the department to confirm the company is entitled to the benefits of the act or to obtain the information required in subsection (2) of this section. The independent accounting firm shall not request any information from the company or its personnel. The independent accounting firm shall be permitted and expected to obtain additional outside public information available from sources outside of the company and the department in order to comply with the requirements for the report if copies of all such data, information, and sources are made available to the public or included with the report.

(6) Information obtained in connection with the audit from either the department or the company is confidential and is not discoverable or admissible in evidence in any civil action, and no department or company personnel shall be compelled to testify in regard thereto. Such information may be discovered and be admissible, and testimony compelled in regard thereto, by the department or by the company in an action relating to the determination of whether the company is entitled to the benefits of the act.

Sec. 45. Section 49-801.01, Revised Statutes Supplement, 2000, as amended by section 1, Legislative Bill 122, Ninety-seventh Legislature, First Session, 2001, is amended to read:

49-801.01. Except as provided by Article VIII, section 1B, of the Constitution of Nebraska and in sections 77-2701.01, 77-2714 to 77-27,123, 77-27,191, 77-4103, 77-4104, and 77-4108 and sections 9, 15, 27, 28, 29, and 39 of this act, any reference to the Internal Revenue Code refers to the Internal Revenue Code of 1986 as it exists on the effective date of this act.

Sec. 46. Section 58-529, Reissue Revised Statutes of Nebraska, is amended to read:

58-529. Any school district impacted by a project approved under the Nebraska Redevelopment Act, the Invest Nebraska Act, or the Quality Jobs Act may file with the governing body an estimate of the amount of additional

expenses of the school district as a result of the project which is in excess of amounts compensated by additional valuation or state aid. The governing body may appropriate funds to the school district to compensate for all or part of the impact.

Sec. 47. Section 77-4932, Reissue Revised Statutes of Nebraska, is amended to read:

77-4932. The Department of Revenue, in consultation with the Governor and the Department of Economic Development, ~~shall~~ may, but is not required to, adopt and promulgate all rules and regulations determined by the Tax Commissioner in his or her discretion to be necessary or appropriate to carry out the purposes of the Quality Jobs Act.

Sec. 48. If any section in this act or any part of any section is declared invalid or unconstitutional, the declaration shall not affect the validity or constitutionality of the remaining portions.

Sec. 49. Original sections 58-529 and 77-4932, Reissue Revised Statutes of Nebraska, and section 49-801.01, Revised Statutes Supplement, 2000, as amended by section 1, Legislative Bill 122, Ninety-seventh Legislature, First Session, 2001, are repealed.

Sec. 50. Since an emergency exists, this act takes effect when passed and approved according to law.