

LEGISLATURE OF NEBRASKA
ONE HUNDRED SIXTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 604

Introduced by Lindstrom, 18.

Read first time January 23, 2019

Committee: Business and Labor

- 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 Director
- 5 of Economic Development and State Treasurer.
- 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) Director means the Director of Economic Development;

13 (4) Earned job factor means an amount equal to:

14 (a) Fifteen thousand dollars for factor 1 jobs with an hourly wage
15 rate of at least one hundred fifty percent of the Nebraska minimum wage;

16 (b) Twenty thousand dollars for factor 2 jobs with an hourly wage
17 rate of at least one hundred seventy-five percent of the Nebraska minimum
18 wage;

19 (c) Thirty thousand dollars for factor 3 jobs with an hourly wage
20 rate of at least two hundred percent of the Nebraska minimum wage; and

21 (d) Forty thousand dollars for factor 4 jobs with an hourly wage
22 rate of at least one hundred fifty percent of the Nebraska minimum wage
23 and which employ veterans, senior citizens, ex-offenders, citizens with
24 disabilities, or any citizen concurrently enrolled in a Department of
25 Health and Human Services assistance program;

26 (5) Full-time equivalent employees means the number of salaried
27 employment positions plus the quotient obtained by dividing the total
28 number of hours for which hourly employees with an hourly wage rate of at
29 least one hundred fifty percent of the Nebraska minimum wage were
30 compensated for employment over the preceding twelve-month period by two
31 thousand eighty;

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

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

13 (a) The entity is a rural business investment company under 7 U.S.C.
14 2009cc or a small business investment company under 15 U.S.C. 681; and

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

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

25 (9) New full-time equivalent employees means the quotient obtained
26 by dividing the total number of hours for which employees were
27 compensated for employment over the preceding twelve-month period by two
28 thousand eighty, then subtracting the full-time equivalent employees at
29 the qualified business on the date of receipt of the initial growth
30 investment, for each year the investment is outstanding;

31 (10) Principal business operations means the operations of a

1 business located at the place or places where at least sixty percent of
2 its employees work or where employees that are paid at least sixty
3 percent of its payroll work. A business that has agreed to relocate or
4 hire new employees using the proceeds of a growth investment to establish
5 its principal business operations in a qualified location in this state
6 shall be considered to have its principal business operations in such new
7 location provided that such business satisfies the requirements of this
8 subdivision within one hundred eighty days after receiving the growth
9 investment, unless the director agrees to a later date. A business
10 located in this state that has agreed to hire new employees in a
11 qualified location using the proceeds of a growth investment to establish
12 its principal business operations in that qualified location shall be
13 considered to have its principal business operations in such qualified
14 location if it hires the necessary employees within one hundred eighty
15 days after receiving the growth investment or a later date, if agreed to
16 by the director;

17 (11) Private contributions means an investment of cash in a High-
18 Wage Jobs and Capital Investment Creation Fund entity to match
19 dollar-for-dollar the grants, loans, or other types of economic
20 assistance up to the investment authority of the High-Wage Jobs and
21 Capital Investment Creation Fund entity. A High-Wage Jobs and Capital
22 Investment Creation Fund entity's private contributions shall be composed
23 of not less than ten percent of equity investments;

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

1 state;

2 (13) Qualified location means a location that meets at least one of
3 the following criteria: (a) A census tract with a poverty rate of twenty
4 percent or greater; (b) a census tract with a median family income of
5 eighty percent or less of that area's median family income; (c) a
6 designated opportunity zone; or (d) a county with fewer than two hundred
7 thousand inhabitants; and

8 (14) Repayment amount means an amount equal to fifty percent of a
9 High-Wage Jobs and Capital Investment Creation Fund entity's investment
10 authority, minus an amount equal to the product of:

11 (a) The number of new full-time equivalent employees reported to the
12 High-Wage Jobs and Capital Investment Creation Fund for each of the High-
13 Wage Jobs and Capital Investment Creation Fund entity's annual reports
14 submitted pursuant to section 5 of this act; and

15 (b) The appropriate earned job factor.

16 Sec. 2. (1) The High-Wage Jobs and Capital Investment Creation Fund
17 is created. The fund shall be administered by the director.

18 (2) The director may receive money or other assets from any source
19 for credit to the fund. The director shall direct the investment of the
20 fund. The director shall remit such money and other assets, along with
21 any interest and earnings from the High-Wage Jobs and Capital Investment
22 Creation fund investments, to the State Treasurer for credit to the High-
23 Wage Jobs and Capital Investment Creation Fund.

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

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

31 (5) Any grants, loans, or other types of economic assistance by the

1 High-Wage Jobs and Capital Investment Creation Fund shall be considered
2 subordinate to any third-party private capital in the fund, excluding the
3 required ten percent equity investment.

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

8 Sec. 3. (1) Beginning October 1, 2019, and until October 1, 2029,
9 the director shall accept applications for approval as a High-Wage Jobs
10 and Capital Investment Creation Fund entity. The application shall
11 include all of the following:

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

13 (b) A copy of the applicant's license showing that the High-Wage
14 Jobs and Capital Investment Creation Fund entity and its affiliates are
15 rural business investment companies under 7 U.S.C. 2009cc or small
16 business investment companies under 15 U.S.C. 681;

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

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

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

28 (2) The director shall make application determinations within sixty
29 business days from the receipt of an administratively complete
30 application in the order in which the applications are received. The fund
31 shall consider applications received on the same day to have been

1 received simultaneously. The fund shall not approve more than thirty
2 million dollars in investment authority in a calendar year. If requests
3 for investment authority received simultaneously would result in the
4 limitation provided in this subsection being exceeded, the director shall
5 proportionally allot the investment authority and grants, loans, or other
6 types of economic assistance among the approved applications. Upon
7 approval of an application, the director and the High-Wage Jobs and
8 Capital Investment Creation Fund entity shall execute a written agreement
9 setting forth the terms and conditions of the grants, loans, or other
10 types of economic assistance.

11 (3) The director may deny an application submitted under this
12 section only for the following reasons:

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

15 (b) The director has already approved the maximum amount of
16 investment authority allowed under this section.

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

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

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

29 (b) Within sixty-five days after receiving the approval issued under
30 this section, send to the director documentation sufficient to prove that
31 the amounts described in subdivision (5)(a) of this section have been

1 collected;

2 (6) If a High-Wage Jobs and Capital Investment Creation Fund entity
3 fails to fully comply with subsection (5) of this section, the director's
4 approval is forfeited and the director shall first award the
5 corresponding investment authority to existing applicants who received
6 investment authority lower than the amount requested under this section
7 and then to new applicants.

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

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

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

28 (b) A High-Wage Jobs and Capital Investment Creation Fund entity,
29 after satisfying subdivision (1)(a) of this section, fails to maintain
30 growth investments at the levels required by subdivision (1)(a) of this
31 section until the sixth anniversary of the closing date. For the purposes

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

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

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

1 Capital Investment Creation Fund entity will not be considered an
2 affiliate of a business solely because of its growth investment.

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

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

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

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

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

27 (c) The number of new full-time equivalent employees and the
28 corresponding earned job factor at the qualified business in this state
29 which cannot be less than zero;

30 (d) The number of full-time equivalent employees at the qualified
31 business on the date of receipt of the initial growth investment in this

1 state; and

2 (e) Any other information required by the director.

3 (2) Within sixty days after receipt of an annual report, the
4 director shall provide written confirmation to the High-Wage Jobs and
5 Capital Investment Creation Fund entity of the new full-time equivalent
6 employees the High-Wage Jobs and Capital Investment Creation Fund entity
7 has been credited for that year.

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

12 (4) The director may adopt and promulgate rules and regulations
13 necessary to carry out sections 1 to 7 of this act.

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

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

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

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

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

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

28 (2) The initial annual fee is due and payable to the director within
29 one business day of receipt of a grant, loan, or other type of economic
30 assistance. After the initial annual fee, an annual fee is due and
31 payable to the director on or before that last day of February of each

1 year.

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

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

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

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

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

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