

MINUTES OF THE SENATE COMMERCE COMMITTEE

The meeting was called to order by Chairman Karin Brownlee at 8:30 a.m. on March 17, 2010, in Room 548-S of the Capitol.

All members were present.

Committee staff present:

Ken Wilke, Office of the Revisor of Statutes
Reed Holwegner, Kansas Legislative Research Department
Kathie Sparks, Kansas Legislative Research Department
Marilyn Arnone, Committee Assistant

Conferees appearing before the Committee:

Ken Wilke, Office of the Revisor of Statutes
Secretary Joan Wagnon, Department of Revenue
Secretary Bill Thornton, Department of Commerce

Others attending:

See attached list.

Chairperson Brownlee announced that she had the report on housing. If there had been some way to assist people in getting the \$8,000 for first time buyers program, we would have wanted to make that happen. But it appears that program will not be renewed on the federal level. Of course, that could change, but we won't pursue that further at this time.

HB 2551 - Granting authority to the department of commerce to recapture unissued recovery zone bond

Chairperson Brownlee began the meeting with **HB 2551** on Recovery Zone Bonds and ask Ken Wilke, from Revisor of Statutes office, to review an amendment to the bill.

Mr. Wilke said the technical amendment concerned changing the word, "act," to the word, "section" on lines 41 and line 28 of the bill, **HB 2551** so there is not a redundancy in the language. (Attachment 1)

Senator Kelsey moved to accept the amendment. Senator Holland seconded the motion. Motion carried.

Senator Kelsey moved to pass the bill favorable out of committee. Senator Lynn seconded the motion. Motion carried.

HB 2553 - Updating references to the standard industrial classification codes in the Kansas enterprise zone act

Senator Schodorf's keen eye caught an error on line 14 of this bill, therefore an amendment to correct the spelling from NACIS to NAICS is made. (Attachment 2)

Senator Kelsey moved to accept the amendment. Senator Emler seconded the motion. Motion carried.

Senator Lynn moved the bill pass favorably out of committee. Senator Holland seconded. Motion carried.

HB 2554 - Authorizing the issuance of bonds for certain economic development projects

Mr. Wilke presented a balloon on this bill to add language to flush out a referral to the finance council that has been sent to the Department of Commerce and approved. Language added to page 3, line 32 is " , acting on this matter which is hereby characterized as a matter of legislative delegation and subject to the guidelines prescribed in subsection © of K.S. A. 75-3711c, and amendments thereto, except that such approval also may be given while the legislature is in session."

Senator Lynn moved to accept this amendment. Senator Emler seconded the motion. Motion carried.



CONTINUATION SHEET

Minutes of the Senate Commerce Committee at 8:30 a.m. on March 17, 2010, in Room 548-S of the Capitol.

Senator Lynn moved to pass the bill favorably out of committee. Senator Emler seconded. Motion carried.

HB 2538 - S Sub for Sub H 2538 by Committee on Commerce – Revision and expansion of promoting employment across Kansas act

Chairperson Brownlee expressed her appreciation to Secretary Thornton and Secretary Wagon for attending the meeting today. She asked Ken Wilke to explain the balloon on **HB 2538**. These amendments are based on material from the Department of Commerce and from conversations with Richard Cram from the Department of Revenue. Basically, this involves striking some old language and adding new language. There are a large number of statutes involved as well. (Attachment 3)

Senator Kelsey asked if this could be a Substitute for Substitute bill to make it a cleaner bill.

Senator Faust-Goudeau asked what happens if an employer does not retain employees for the two year period after entering into the agreement with the Department of Commerce. Mr. Wilke deferred to the Department of Commerce.

Chairperson Brownlee said she had talked in generalities with Secretary Thornton, Secretary Wagon, members of KEDA and others. One generality addressed was removing the Business and Job credit from the Metro counties because that is not critical to actually getting new jobs to an area. The test often talked about in economic development is the "but for" test. But for this credit, the job wouldn't have come or this company wouldn't have come. In the Metro areas, the Business and Job credit isn't the difference maker. So we haven't statutorily made that change. But in the rural areas the B & J credit is very important, so we don't want to remove that from the rural areas. So the effort to try to correct the fiscal note issues was to trade out something currently in place. That especially relates to any Kansas company that might be creating a new unit. Currently PEAK cannot be used for that. The other thing we are trying to correct in PEAK is that a company does not have to close down other companies. If companies are moving into a new unit or to a new location, then obviously we want to welcome them. Kansas doesn't want to tell companies they have to close down all other operations to be welcome here.

For many years, this committee has tried to have Kansas, Inc. evaluate how economic development programs perform and what is the return on the investment for Kansas. Kansas, Inc. has not had the funding to do this. It was suggested that \$250,000 be taken from the IMPACT fund for Kansas, Inc. to do evaluations. Providing funding for Kansas, Inc. is what some of the new sections of this bill would do.

Secretary of Commerce has been given more discretion in this bill. Previously, it was set up as more of an entitlement that companies would apply for and get. Now applications will be processed by Commerce Department so there is more discretion to be sure quality jobs are being created. Median wage was also noted

Discussion followed concerning some other changes that need to be made in the language of the bill. Chairperson Brownlee suggested the this be tabled until tomorrow's meeting to allow all parties to examine the bill carefully so everyone can be comfortable with the bill.

Secretary Wagon said she wanted to be complimentary of Sections 7, 8, and 9. She would like to have added that all the reports that come into the Revenue Department be done electronically.

The next meeting is scheduled for March 18, 2010.

The meeting was adjourned at 09:30 a.m.

HOUSE BILL No. 2551

By Committee on Economic Development and Tourism

1-27

9 AN ACT concerning recovery zone bonds; granting authority to the de-
10 partment of commerce to recapture unissued bonds.

11
12 *Be it enacted by the Legislature of the State of Kansas:*

13 Section 1. (a) As used in this section:

14 (1) "Department" means the department of commerce.

15 (2) "Recovery zone bonds" means any recovery zone economic de-
16 velopment bonds or recovery zone facility bonds that are allocated pur-
17 suant to Section 1400U-1 of the Internal Revenue Code of 1986, as
18 amended.

19 (b) (1) The department shall allocate recovery zone bonds to coun-
20 ties and large municipalities in accordance with Section 1400U-1 of the
21 Internal Revenue Code of 1986, as amended, and shall provide notice of
22 such allocation to each county and large municipality. A county or large
23 municipality may, at any time, waive any allocation of recovery zone bonds
24 by providing written notice to the department. Each allocation shall be
25 deemed waived by the county or large municipality on the sixtieth day
26 following notice of allocation, except to the extent the county or large
27 municipality provided the department with written notice of intent to
28 issue recovery zone bonds stating the amount and type to be issued. Each
29 county or large municipality shall notify the department in writing of the
30 issuance of recovery zone bonds. Any recovery zone bonds allocated to a
31 county or large municipality which remain unissued as of June 30, 2010,
32 shall be recaptured by the department for reallocation.

33 (2) Any county or municipality may apply to the department for the
34 allocation of additional recovery zone bonds to the extent such bonds are
35 available due to the waiver of recovery zone bond allocations by other
36 counties or large municipalities or the recapture of recovery zone bonds
37 by the department as provided under paragraph (1) of this subsection.
38 The department may reallocate such recovery zone bonds to any county
39 or municipality as provided by rule.

40 (c) The department may adopt such rules and regulations as may be
41 required for the implementation and administration of this [ac] section

42 Sec. 2. (a) As used in this section:

43 (1) "Department" means the department of commerce.

1 (2) "Qualified energy conservation bonds" means any qualified en-
2 ergy conservation bonds that are allocated pursuant to Section 54D(e)(1)
3 of the Internal Revenue Code of 1986, as amended.

4 (b) (1) The department shall allocate qualified energy conservation
5 bonds to large local governments in accordance with Section 54D(e)(1)
6 of the Internal Revenue Code of 1986, as amended, and shall provide
7 notice of such allocation to each large local government. A large local
8 government may, at any time, waive any allocation of qualified energy
9 conservation bonds by providing written notice to the department. Each
10 allocation shall be deemed waived by the large local government on the
11 sixtieth day following notice of allocation, except to the extent the large
12 local government provided the department with written notice of intent
13 to issue qualified energy conservation bonds stating the amount and type
14 to be issued. Each large local government shall notify the department in
15 writing of the issuance of qualified energy conservation bonds. Any qual-
16 ified energy conservation bonds allocated to a large local government
17 which remain unissued as of June 30 of each year, shall be recaptured by
18 the department for reallocation.

19 (2) Any local government may apply to the department for the allo-
20 cation of additional qualified energy conservation bonds to the extent such
21 bonds are available due to the waiver of qualified energy conservation
22 bond allocations by other large local governments or the recapture of
23 qualified energy conservation bonds by the department as provided under
24 paragraph (1) of this subsection. The department may reallocate such
25 qualified energy conservation bonds to any local government as provided
26 by rule.

27 (c) The department may adopt such rules and regulations as may be
28 required for the implementation and administration of this act.

29 Sec. 3. This act shall take effect and be in force from and after its
30 publication in the Kansas register.

section

1 (e) "Manufacturing business" means all commercial enterprises iden-
 2 tified under the manufacturing ~~standard industrial classification codes,~~
 3 ~~major groups 20 through 39~~ NAICS subsectors 311 to 339.

4 (f) "Metropolitan county" means the county of Douglas, Johnson,
 5 Leavenworth, Sedgwick, Shawnee or Wyandotte.

6 (g) "NAICS" means the North American industry classification sys-
 7 tem, as developed under the authority of the office of management and
 8 budget of the office of the president of the United States.

9 ~~(g)~~ (h) "Nonmanufacturing business" means any commercial enter-
 10 prise other than a manufacturing business or a retail business. Nonman-
 11 ufacturing business shall also include the business headquarters of an
 12 enterprise, ancillary support of an enterprise, and an enterprise desig-
 13 nated under ~~standard industrial classification codes 5061, 7948-0201 or~~
 14 ~~7372~~ NAICS industry groups 4541, 5112 and 7112 regardless of the firm's
 15 classification as a retail business if that facility for which the sales tax
 16 exemption certificate is issued facilitates the creation of at least 20 new
 17 full-time positions. In addition, with respect to enterprises in ~~standard~~
 18 ~~industrial classification code 7948-0201~~ NAICS industry group 7112, such
 19 enterprises must operate an auto racetrack in the state involving capital
 20 improvements costing not less than \$100,000,000.

21 For taxable years commencing after December 31, 1997, any ancillary
 22 support business which would otherwise be eligible for a sales tax ex-
 23 emption or an income, premium or privilege tax credit pursuant to this
 24 subsection shall incorporate in its tax filing for the exemption or credit a
 25 statement from the secretary of commerce which includes a finding by
 26 the secretary that the job expansion incident to the exemption or credit
 27 claimed would not have occurred in the absence of the credit or
 28 exemption.

29 ~~(h)~~ (i) "Nonmetropolitan region" means a region established under
 30 K.S.A. 74-50,116 and amendments thereto and is comprised of any county
 31 or counties which are not metropolitan counties.

32 ~~(i)~~ (j) "Retail business" means: (1) Any commercial enterprise pri-
 33 marily engaged in the sale at retail of goods or services taxable under the
 34 Kansas retailers' sales tax act; (2) any service provider set forth in K.S.A.
 35 17-2707, and amendments thereto; (3) any bank, savings and loan or other
 36 lending institution; (4) any commercial enterprise whose primary business
 37 activity includes the sale of insurance; and (5) any commercial enterprise
 38 deriving its revenues directly from noncommercial customers in exchange
 39 for personal services such as, but not limited to, barber shops, beauty
 40 shops, photographic studios and funeral services.

41 ~~(j)~~ (k) "Secretary" means the secretary of the Kansas department of
 42 commerce.

43 ~~(k)~~ "Standard industrial classification code" means a standard indus-

[NAICS

1 opment, engineering or manufacturing project (A) undertaken by an el-
 2 ible wind or solar energy business relating to the production of a busi-
 3 ness component or product and may include, but not be limited to,
 4 product development and design, applied research, manufacturing, im-
 5 provement, replacement or acquisition of real or personal property and
 6 modernization and retooling of existing property in Kansas, (B) for which
 7 the eligible wind or solar energy business proposes to invest not less than
 8 \$30,000,000 in Kansas in direct connection with the eligible wind or solar
 9 energy project of not less than \$30,000,000 in Kansas and (C) for which
 10 the eligible wind or solar energy business proposes to employ at least 200
 11 full-time employees in Kansas within five years, as defined in K.S.A. 74-
 12 50,114, and amendments thereto.

13 (8) "Gross compensation" means gross wages and benefits paid to or
 14 on behalf of employees receiving wages.

15 (9) "Secretary" means the secretary of commerce.

16 (d) A person, corporation, partnership or other entity proposing to
 17 undertake an eligible project, eligible aviation project or eligible wind or
 18 solar energy project may apply to the secretary to enter into an agreement
 19 for benefits under this act. The application shall include (1) evidence that
 20 the applicant is an "eligible business", "eligible aviation business" or "el-
 21 ible wind or solar energy business" as defined in subsection (c) and (2)
 22 a detailed description of the eligible project, eligible aviation project or
 23 eligible wind or solar energy project.

24 (e) Upon receipt of an application described in subsection (d), if the
 25 secretary finds that the application is from an eligible business, eligible
 26 aviation business or eligible wind or solar energy business and that the
 27 project constitutes an eligible project, eligible aviation project or eligible
 28 wind or solar energy project, the secretary may enter into an agreement
 29 with the eligible business, eligible aviation business or eligible wind or
 30 solar energy business for benefits under this act. Such agreement for
 31 benefits shall be subject to review and approval of the state finance coun-
 32 cil created by K.S.A. 75-3708, and amendments thereto. The agreement
 33 shall commit the secretary to request that the Kansas development fi-
 34 nance authority issue bonds pursuant to the Kansas development finance
 35 authority act, K.S.A. 74-8901 et seq., and amendments thereto, to finance
 36 the eligible project for the benefit of the eligible business in an aggregate
 37 principal amount not to exceed \$500,000,000, plus costs of issuance, costs
 38 of credit enhancement, reserve funds and capitalized interest, or in the
 39 case of an eligible aviation project in a principal amount not to exceed
 40 \$33,000,000 for a single eligible aviation project or in the case of an eli-
 41 gible wind or solar energy project in a principal amount not to exceed
 42 \$5,000,000 for a single eligible wind or solar energy project and in an
 43 aggregate principal amount not to exceed \$150,000,000 for all eligible

Senate Committee on Commerce
 HB 2554 as amended by House
 Committee

Prepared by Kenneth M. Wilke
 March 5, 2010.

, acting on this matter which is hereby
 characterized as a a matter of legislative
 delegation and subject to the guidelines
 prescribed in subsection (c) of K.S.A.
 75-3711c, and amendments thereto,
 except that such approval also may be
 given while the legislature is in session

Substitute for HOUSE BILL No. 2538

By Committee on Taxation

2-12

10 AN ACT concerning the promoting employment across Kansas act; re-
11 lating to qualifications for benefits under the act; amending K.S.A.
12 2009 Supp. 74-50,210, 74-50,211, 74-50,212 and 74-50,213 and re-
13 pealing the existing sections.

74-50,103, 74-50,108, 74-50,210, 74-50,211,
74-50,212, 74-50,213, 74-50,214, and 74-8010

14
15 *Be it enacted by the Legislature of the State of Kansas:*

16 Section 1. K.S.A. 2009 Supp. 74-50,210 is hereby amended to read
17 as follows: 74-50,210. (a) The provisions of K.S.A. 2009 Supp. 74-50,210
18 through 74-50,216, and amendments thereto, shall be known and may be
19 cited as the promoting employment across Kansas act.

20 (b) It shall be the intent of this act to foster economic development
21 and the creation of new jobs and opportunities for the citizens of Kansas
22 through incentivizing the repatriation of business facilities, other opera-
23 tions and jobs from foreign countries and to incentivize the relocation
24 location of business facilities, other operations and jobs from other states
25 to in Kansas. The primary objective of this legislation is economic devel-
26 opment for Kansas. The state of Kansas, the secretary of the department
27 of commerce and the department of commerce shall solicit and approve
28 applications by qualified companies pursuant to this act.

from other states to

29 Sec. 2. K.S.A. 2009 Supp. 74-50,211 is hereby amended to read as
30 follows: 74-50,211. As used in this act, unless the context otherwise
31 requires:

32 (a) "Act" means the provisions of K.S.A. 2009 Supp. 74-50,210
33 through 74-50,216, and amendments thereto.

34 (b) "County average median wage" means the average median wage
35 paid to employees located in the county where the qualified company
36 intends to employ new employees as reported by the department of labor
37 in its annual report for the previous year.

38 (c) "Department" means the department of commerce.

39 (d) ~~"Existing business unit" means a facility, plant, division, office,~~
40 ~~department, production line, production shift or other unit of business~~
41 ~~operations acquired by a qualified company that has continuously oper-~~
42 ~~ated a business outside of the state of Kansas during the 12-month period~~
43 ~~immediately preceding the qualified company's application for benefits~~

1 ~~under this act and can provide sufficient evidence of a bona fide acqui-~~
2 ~~sition of the existing Kansas business unit to the satisfaction of the~~
3 ~~secretary.~~

4 ~~(e) "Expanding business unit" means a facility, plant, division, office,~~
5 ~~department, production line, production shift or other unit of business~~
6 ~~operations that existed in Kansas prior to the submission of an application~~
7 ~~for benefits under this act and that is proposing a project that, in the~~
8 ~~discretion of the secretary, is at significant risk of being located outside~~
9 ~~the state and that provides a unique economic development opportunity~~
10 ~~for the state.~~

Re-letter remaining subsections accordingly.

11 ~~(d) (f) "High-impact project" means a business development project~~
12 ~~for which the qualified company shall meet the requirements of subsec-~~
13 ~~tion (c) of K.S.A. 2009 Supp. 74-50,212, and amendments thereto.~~

14 ~~(e) (g) "NAICS" means the North American industry classification~~
15 ~~system.~~

16 ~~(h) "NAICS code industry average wage" means the average wage~~
17 ~~paid to employees of companies classified in the same NAICS code as the~~
18 ~~qualified company for the region in which the qualified company intends~~
19 ~~to employ new employees as reported by the department of labor in its~~
20 ~~annual report for the previous year.~~

Re-letter remaining subsections accordingly.

21 ~~(i) "Metropolitan county" means the county of Douglas, Johnson,~~
22 ~~Sedgwick, Shawnee or Wyandotte.~~

23 ~~(j) "New business unit" means a facility, plant, division, office, de-~~
24 ~~partment, production line, production shift or other unit of business op-~~
25 ~~erations that did not exist in Kansas prior to the submission of an appli-~~
26 ~~cation for benefits under this act and that provides documentation of such~~
27 ~~to the satisfaction of the secretary.~~

Re-letter remaining subsections accordingly.

28 ~~(k) "New employee" means a person newly employed or main-~~
29 ~~tained by the qualified company in the qualified company's business op-~~
30 ~~erating in Kansas during the taxable year for which benefits are sought~~
31 ~~under K.S.A. 2009 Supp. 74-50,212, and amendments thereto. A person~~
32 ~~shall be deemed to be so engaged if such person performs duties in Kan-~~
33 ~~sas in connection with the operation of the Kansas business on: (1) A~~
34 ~~regular, full-time basis; or (2) a part-time basis, provided such person is~~
35 ~~customarily performing such duties at least 20 hours per week throughout~~
36 ~~the taxable year. Employees acquired or relocated to Kansas from another~~
37 ~~state through an expansion or relocation of a business operation to Kansas~~
38 ~~from another state shall be considered as new employees.~~

Employees acquired or relocated to Kansas from another state through an expansion of a business operation to Kansas from another state through an expansion or relocation of a business operation to Kansas from another state shall be considered as new employees

39 ~~(l) "Non-metropolitan county" means any county that is not a~~
40 ~~metropolitan county.~~

41 ~~(m) (1) "Qualified company" means any for-profit corporation,~~
42 ~~partnership or other entity, organized for profit making available to its~~
43 ~~full-time employees adequate health insurance coverage and paying at~~

1 least 50% of the premium for such health insurance, which meets the
2 requirements of K.S.A. 2009 Supp. 74-50,212, and amendments thereto,
3 ~~and paying its new employees an average annual wage that meets stan-~~
4 ~~dards established [the county median wage as confirmed] by the~~
5 ~~secretary.~~

and submits an application for benefits meeting requirements established by the secretary

6 (2) "Qualified company" shall not include any ~~for profit, not for-~~
7 ~~profit or governmental~~ corporation, partnership or other entity: (A) Which
8 is identified by any of the following NAICS code groups, sectors or
9 subsectors:

- 10 (i) Industry group 7132 or 8131;
- 11 (ii) sectors 44, 45, 61, 92 or 221 (including water and sewer services);
- 12 or
- 13 (iii) subsector 722;

14 (B) which is a bioscience company, as defined in K.S.A. 2009 Supp.
15 74-99b33, and amendments thereto;

16 (C) which is delinquent in the payment of any nonprotested taxes or
17 any other amounts due to the federal government, the state of Kansas or
18 any other political taxing subdivision; or

19 (D) which has filed for or has publicly announced its intention to file
20 for bankruptcy protection.

21 (3) Notwithstanding any provision of this subsection, except for par-
22 agraphs (2)(B), (C) and (D), ~~a company any entity~~ may be deemed a
23 qualified company if such ~~company's entity~~ headquarters or administra-
24 tive offices located in this state serve an international or multi-state ter-
25 ritory and such ~~company entity~~ meets the requirements of K.S.A. 2009
26 Supp. 74-50,212, and amendments thereto.

a company

company's

company

27 ~~(4) Notwithstanding any provision of this subsection, except for par-~~
28 ~~agraphs (2)(B), (C) and (D), any entity may be deemed a qualified com-~~
29 ~~pany if such entity is an expanding business unit.~~

30 (j) (n) "Secretary" means the secretary of the department of
31 commerce.

32 Sec. 3. K.S.A. 2009 Supp. 74-50,212 is hereby amended to read as
33 follows: 74-50,212. (a) In order to qualify for benefits under this act a
34 qualified company shall ~~relocate an existing business facility, office, de-~~
35 ~~partment or other operation located outside the state of Kansas, whether~~
36 ~~located in a foreign country or another state, and locate the jobs from~~
37 ~~such business facility, office, department or other operation to Kansas:~~
38 ~~(1) Establish a new business unit in the state of Kansas and locate the job~~
39 ~~positions associated with the new business unit in Kansas; or (2) maintain~~
40 ~~the employees of an existing business unit located in Kansas subsequent~~
41 ~~to the qualified company's acquisition of such business unit.~~ A qualified
42 company may contract with an ~~unrelated~~ ~~an unrelated~~ third party to
43 perform services whereby the third party serves as the legal employer of

relocate or expand an existing business facility, office, department or other operation located outside the state of Kansas, whether located in a foreign country or another state, and locate the jobs directly related to such new business facility, office, department or other operation in Kansas.

1 the new employees providing services to the qualified company and such
2 services are performed in Kansas and the third party and the new em-
3 ployees are subject to Kansas state withholding.

approved by the secretary

4 (b) Any qualified company, ~~qualifying for benefits pursuant to para-~~
5 ~~graph (a)(1),~~ that locates its business ~~operation unit~~ in a metropolitan
6 county and will hire at least 10 new employees within two years from the
7 date the qualified company enters into an agreement with the secretary
8 pursuant to K.S.A. 2009 Supp. 74-50,213, and amendments thereto, or
9 any qualified company, ~~qualifying for benefits pursuant to paragraph~~
10 ~~(a)(1),~~ that locates its business ~~operation unit~~ in a non-metropolitan
11 county and will hire at least five new employees within two years from
12 the date the qualified company enters into an agreement with the sec-
13 retary pursuant to K.S.A. 2009 Supp. 74-50,213, and amendments
14 thereto, shall: (1) Be eligible to retain 95% of the qualified company's
15 Kansas payroll withholding taxes for such new employees for a period of:

approved by the secretary

up to

being paid the county median wage
or higher

16 (1) ~~Five years if the new employees are compensated at a rate equal~~
17 ~~to at least 100% of the county average wage;~~
18 ~~(2) six years if the new employees are compensated at a rate equal to~~
19 ~~at least 110% of the county average wage, or~~
20 ~~(3) seven years if the new employees are compensated at a rate equal~~
21 ~~to at least 120% of the county average wage.~~

22 (A) Five years if the ~~average~~ [median] wage paid to the new em-
23 ployees is equal to at least 100% of the county median wage;

24 (B) six years if the ~~average~~ [median] wage paid to the new employees
25 is equal to at least 110% of the county median wage; or

26 (C) seven years if the ~~average~~ [median] wage paid to the new em-
27 ployees is equal to at least 120% of the county median wage; or

28 (2) ~~be eligible to retain 95% of the qualified company's Kansas payroll~~
29 ~~withholding taxes for such new employees for a period of five years if the~~
30 ~~average [median] wage paid to the new employees is equal to at least~~
31 ~~100% of the NAICS code industry average wage.~~

approved by the secretary

32 (c) Any qualified company, ~~qualifying for benefits pursuant to para-~~
33 ~~graph (a)(1),~~ that engages in a high-impact project whereby the qualified
34 company will hire at least 100 new employees within ~~five~~ two years from
35 the date the qualified company enters into an agreement with the sec-
36 retary pursuant to K.S.A. 2009 Supp. 74-50,213, and amendments
37 thereto, shall be eligible to retain 95% of the qualified company's Kansas
38 payroll withholding taxes for such new employees for a period of:

being paid the county median
wage or higher

up to

39 (1) ~~Seven years if the new employees are compensated at a rate equal~~
40 ~~to at least 100% of the county average wage;~~

41 ~~(2) eight years if the new employees are compensated at a rate equal~~
42 ~~to at least 110% of the county average wage;~~

43 ~~(3) nine years if the new employees are compensated at a rate equal~~

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1 to at least 120% of the county average wage; or
2 ~~(4) ten years if the new employees are compensated at a rate equal~~
3 ~~to at least 140% of the county average wage.~~

4 (1) Seven years if the ~~average~~ [median] wage paid to the new em-
5 ployees is equal to at least 100% of the county median wage;

6 (2) eight years if the ~~average~~ [median] wage paid to the new em-
7 ployees is equal to at least 110% of the county median wage;

8 (3) nine years if the ~~average~~ [median] wage paid to the new em-
9 ployees is equal to at least 120% of the county median wage; or

10 (4) ten years if the ~~average~~ [median] wage paid to the new employees
11 is equal to at least 140% of the county median wage.

12 ~~(d) Any qualified company, qualifying for benefits pursuant to par-~~
13 ~~agraph (a)(2), that maintains the employees of an existing or expanding~~
14 ~~business unit located in Kansas for a period of two years from the date~~
15 ~~the qualified company enters into an agreement with the secretary pur-~~
16 ~~suant to K.S.A. 2009 Supp. 74-50,213, and amendments thereto, shall be~~
17 ~~eligible to retain 95% of the qualified company's Kansas payroll with-~~
18 ~~holding taxes for such employees for a period of up to five years.~~

19 ~~(e)~~ In the event that a qualified company contracts with a third party
20 as described in paragraphs (a)(3) and (4) subsection (a), the third party
21 shall remit payments equal to the amount of Kansas payroll withholding
22 taxes the qualified company is eligible to retain under this section to the
23 qualified company, and report such amount to the department of revenue
24 as required pursuant to subsection (a) of K.S.A. 2009 Supp. 74-50,214,
25 and amendments thereto.

26 Sec. 4. K.S.A. 2009 Supp. 74-50,213 is hereby amended to read as
27 follows: 74-50,213. (a) Any qualified company meeting the requirements
28 of K.S.A. 2009 Supp. 74-50,212, and amendments thereto, may apply to
29 the secretary for benefits under this act. The application shall be sub-
30 mitted on a form and in a manner prescribed by the secretary, and shall
31 include: (1) Evidence that the applicant is a qualified company; and (2)
32 evidence that the applicant meets the requirements of K.S.A. 2009 Supp.
33 74-50,212, and amendments thereto.

may

34 (b) The secretary ~~shall~~ either approve or disapprove the application.
35 Any qualified company whose application is approved shall be eligible to
36 receive benefits under this act as of the date such qualified company
37 enters into an agreement with the secretary in accordance with this
38 section.

39 (c) Upon approval of an application for benefits under this act, the
40 secretary may enter into an agreement with the qualified company for
41 benefits under this act. If necessary, the secretary may also enter into an
42 agreement with any third party described in subsection (a) of K.S.A. 2009
43 Supp. 74-50,212, and amendments thereto, or such third party may be a

1 party to the agreement between the qualified company and the secretary.
2 The agreement shall commit the secretary to certify to the secretary of
3 revenue: (1) That the qualified company is eligible to receive benefits
4 under this act; (2) the number of new employees hired by the qualified
5 company; and (3) the amount of gross wages being paid to each new
6 employee.

7 (d) The agreement between the qualified company and the secretary
8 shall be entered into before any benefits may be provided under this act,
9 and shall specify that should the qualified company fail to comply with
10 the terms and conditions set forth in the agreement, or fails to comply
11 with the provisions set forth in this act, the secretary may terminate the
12 agreement, and the qualified company shall not be entitled to any further
13 benefits provided under this act and shall be required to remit to the state
14 an amount equal to the aggregate Kansas payroll withholding taxes re-
15 tained by the qualified company, or remitted to the qualified company
16 by a third party, pursuant to this act as of the date the agreement is
17 terminated.

18 (e) A qualified company that is already receiving benefits pursuant to
19 this act may apply to the secretary for additional benefits if the qualified
20 company meets the requirements of K.S.A. 2009 Supp. 74-50,212, and
21 amendments thereto.

22 (f) A qualified company seeking benefits shall ~~not~~ be allowed to partic-
23 ipate in the IMPACT program, ~~or any program~~ pursuant to K.S.A. 74-
24 50,102 *et seq.*, and amendments thereto, ~~or but shall not be allowed to~~
25 *participate in* any other program in which any portion of such qualified
26 company's Kansas payroll withholding taxes have been pledged to finance
27 indebtedness or transferred to or for the benefit of such company. A
28 qualified company shall not be allowed to claim any credits under K.S.A.
29 79-32,153, 79-32,160a or 79-32,182b, and amendments thereto, if such
30 credits would otherwise be earned for the hiring of new employees and
31 the qualified company has retained any Kansas payroll withholding taxes
32 from wages of such employees. *A qualified company shall not be eligible*
33 *to receive benefits under K.S.A. 2009 Supp. 74-50,212, and amendments*
34 *thereto, and under K.S.A. 74-50,102 et seq., and amendments thereto, for*
35 *the same new employees.*

36 ~~(g) The secretary shall be authorized to impose a nonrefundable ap-~~
37 ~~plication fee of up to \$1,000 for each application submitted pursuant to~~
38 ~~this act.~~ ✓

39 ~~(g) (h)~~ [(g)] The secretary shall adopt rules and regulations necessary
40 to implement and administer the provisions of this act.

41 [New Sec. 5. The legislative post auditor shall conduct an audit
42 of the promoting employment across Kansas act under this section
43 in accordance with the provisions of the legislative post audit act.

(g) Under no circumstances shall the total amount of benefits authorized or granted under this act shall exceed \$6,000,000 in any fiscal year commencing on or after July 1, 2011.

Renumber remaining subsection accordingly.
Insert new sections amending K.S.A. 2009 Supp. 74-50,214, 74-50,103, 74-50,108, 74-8010, new Section 9 and renumber remaining sections accordingly.

1 The audit shall focus on the effectiveness of the act in fostering
2 economic growth, creating new jobs and promoting the location
3 of business facilities, other operations and jobs in Kansas. Such
4 audit shall be submitted to the legislature at the beginning of the
5 regular session of the legislature held during 2015.]

6 [New Sec. 6. No person who was a member of the legislature
7 on the effective date of this act may avail themselves of the benefits
8 under the provisions of K.S.A. 2009 Supp. 74-50,210 through 74-
9 50,216, and amendments thereto, until after July 1, 2015.]

10 Sec. 5. [7.] K.S.A. 2009 Supp. 74-50,210, 74-50,211, 74-50,212 and
11 74-50,213 are hereby repealed.

12 Sec. 6. [8.] This act shall take effect and be in force from and after
13 its publication in the statute book.

74-50,103, 74-50,108, 74-50,210, 74-50,211,
74-50,212, 74-50,213, 74-50,214, and 74-8010

5
Sec. 1. K.S.A. 2009 Supp. 74-50,214 is hereby amended to read as follows: 74-50,214.

(a) Any qualified company eligible to receive benefits pursuant to K.S.A. 2009 Supp. 74-50,212, and amendments thereto, shall complete and submit to the department of revenue the amount of Kansas payroll withholding tax being retained by the qualified company pursuant to this act in a manner prescribed by the director of taxation.]

(b) The secretary of revenue shall adopt rules and regulations necessary to implement and administer the provisions of this act. The secretary of revenue and the secretary of commerce shall work together to coordinate a set of procedures to implement the provisions of this act.

3-8
(a) Any qualified company eligible to receive benefits pursuant to K.S.A. 2009 Supp. 74-50,212, and amendments thereto, shall complete and submit to the department of revenue:

- (1) the amount of Kansas payroll withholding tax being retained by the qualified company pursuant to this act in a manner prescribed by the director of taxation.
- (2) a form designed by the secretary of revenue pursuant to section 9, and amendments thereto.

3-9

Sec. 6 . K.S.A. 2009 Supp. 74-50,103 is hereby amended to read as follows: 74-50,103. as used in the IMPACT act unless the context clearly requires otherwise:

(a) "Act" means the Kansas investments in major projects and comprehensive training act.

(b) "Agreement" means the agreement among an employer, an educational institution and the secretary of commerce concerning a SKILL project or a combined SKILL project and major project investment and the agreement between an employer and the secretary of commerce concerning a major project investment.

(c) "Bond" means a public purpose bond issued for IMPACT projects by the Kansas development finance authority.

(d) "Date of commencement of the project" means the date of the agreement.

(e) "Educational institution" means a community college, as defined by K.S.A. 71-701, and amendments thereto, an area vocational school or area vocational-technical school, as defined by K.S.A. 72-4412, and amendments thereto, a university, as defined by K.S.A. 72-6501, and amendments thereto, a state educational institution, as defined by K.S.A. 76-711, and amendments thereto, or a technical college as established by K.S.A. 72-4468, and amendments thereto.

(f) "Employee" means a person employed in a new or retained job.

(g) "Employer" means a Kansas basic enterprise providing new jobs or retaining existing jobs in conjunction with a project.

(h) "IMPACT program" or "program" means the major project investments and SKILL projects undertaken by the department of commerce in accordance with the provisions of this act for a new or expanding Kansas basic enterprise.

(i) "IMPACT project" or "project" means a SKILL project, major project investment or

a combination of the two.

(j) "Kansas basic enterprise" means any enterprise:

(1) Which is located or principally based in Kansas; and

(2) which can provide demonstrable evidence that:

(A) It is primarily engaged in any one or more of the Kansas basic industries; or

(B) it is primarily engaged in the development or production of goods or the provision of services for out-of-state sale;

or

(C) it is primarily engaged in the production of goods or the provision of services which will attract out-of-state buyers or consumers into the state; or

(D) it is primarily engaged in the production of raw materials, ingredients, or components for other enterprises which export the majority of their products from the state; or

(E) it is a national or regional enterprise which is primarily engaged in interstate commerce or an affiliated management company of such an enterprise; or

(F) it is primarily engaged in the production of goods or the provision of services which will supplant goods or services which would be imported into the state; or

(G) it is the corporate or regional headquarters of a multistate enterprise which is primarily engaged in out-of-state industrial activities.

(k) "Kansas basic industry" means:

(1) Agriculture;

(2) mining;

(3) manufacturing;

(4) interstate transportation;

(5) wholesale trade which is primarily multistate in activity or which has a major import supplanting effect within the state;

(6) financial services which are provided primarily for interstate or

international transactions;

(7) business services which are provided primarily in out-of-state markets;

(8) research and development of new products, processes, or technologies; or

(9) tourism activities which are primarily engaged in for the purpose of attracting out-of-state tourists.

(l) "Major project investment" or "investment" means financial assistance to an employer to defray business costs including, but not limited to, relocation expenses, building and equipment purchases, labor recruitment and job retention.

(m) "New job" means a job in a new or expanding Kansas basic enterprise not including jobs of recalled workers, or existing jobs that are vacant or other jobs that formerly existed in the Kansas basic enterprise in Kansas.

(n) "Primarily engaged" means engagement in an activity by an enterprise to the extent that not less than 51% of the gross income of the enterprise is derived from such engagement.

(o) "Program costs" means all necessary and incidental costs of providing program services, except that program costs shall not include: (1) Any costs for purchase or lease of training equipment that exceed 50% of total program costs for the project, (2) any costs for administrative expenses that exceed 10% of total program costs for the project, and (3) any costs for direct investments in education and related workforce development institutions, for improvements to workforce development, human capital, training expertise and infrastructure that exceed 10% of total program costs.

(p) "Program services" means:

(1) New jobs training, including training development costs, except that the actual training period for any new job shall not exceed 36 months from the date the job is first filled by an employee;

- (2) adult basic education and job-related instruction;
- (3) vocational and skill-assessment services and testing;
- (4) training equipment for education institutions;
- (5) material and supplies;
- (6) administrative expenses of educational institutions for new jobs training programs;
- (7) subcontracted services with other educational institutions, private colleges or universities or other federal, state or local agencies;
- (8) contracted or professional service;
- (9) major project investments; [and]
- (10) direct investments in educational and related workforce development institutions, for improvements to workforce development, human capital, training expertise and infrastructure.

;and
 (11) economic impact analysis and related services for department of commerce programs.

(q) "Retained job" means an existing job which will be lost without participation by the employer under the provisions of the IMPACT program.

(r) "Secretary" means the secretary of commerce.

(s) "SKILL project" means a training arrangement which is the subject of an agreement entered into between the educational institution and an employer to provide program services.

Sec. 7. K.S.A. 2009 Supp. 74-50,108 is hereby amended to read as follows: 74-50,108.

(a)

There is hereby created in the state treasury the IMPACT program services fund. The secretary shall administer the IMPACT program services fund. [All] moneys credited to the IMPACT program services fund shall be for all or part of the program costs of projects or major project investments approved by the secretary under this act, except that moneys in the IMPACT program services fund which are not required to pay program costs or major projects investments may be transferred to the state general fund in accordance with provisions of appropriation acts. All expenditures from the IMPACT program services fund shall be for the purposes of paying program costs and shall be made in accordance with appropriations acts upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the secretary or the secretary's designee. The secretary shall remit all moneys received under this act, including the proceeds of bonds issued by the Kansas development finance authority for the purposes of this act to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of the IMPACT program services fund.

Subject to the provisions of subsection (b), all

(b) During the fiscal year ending June 30, 2011, and during each ensuing fiscal year thereafter, the director of accounts and reports is hereby authorized to transfer the amount of \$250,000 from the IMPACT service fund to the Kansas Inc. program audit analysis fund which is hereby created in the state treasury which shall be administered by the president and chief executive officer of Kansas Inc. All expenditures from the Kansas Inc. program audit analysis fund shall be for conducting program audits of tax credit programs requested by either the secretary of the department of revenue or the secretary of commerce and for no other purpose. All expenditures from the Kansas Inc. program audit analysis fund shall be made in accordance with appropriation acts upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the president and chief executive officer of Kansas Inc. or such person's designee.

8

Sec. 7. K.S.A. 2009 Supp. 74-8010 is hereby amended to read as follows: 74-8010.

(a) Kansas, Inc. shall review and evaluate the effectiveness of economic development programs and activities within the state, including, but not by way of limitation, the Kansas technology enterprise corporation programs and activities, the major programs and activities of the department of commerce, the statewide risk capital system, the venture capital tax credit, and the research and development activities tax credit. The effectiveness of the research and development activities tax credit shall be measured by the extent to which the tax credit encourages innovation and development of new value-added products and processes which will lead to the commercialization of new products and processes by primary job creating Kansas businesses.

(b) Kansas, Inc. shall periodically conduct a review and evaluation of economic development programs and activities. The review and evaluation should include:

(1) A performance analysis of the extent to which the purposes of the acts providing for the programs and activities have been achieved; and

(2) the economic and fiscal impact of the programs and activities on the state's economy and jobs created.

(c) Based on the findings of its review and evaluation, Kansas, Inc. will recommend to the legislature the continuation in effect, modification, or repeal of the acts providing for the programs and activities.

(d) At the request of the secretary of revenue, Kansas Inc. shall conduct program audits of tax credit programs using information obtained in accordance with section 9, and amendments thereto. Kansas Inc shall complete each program audit within 90 days after receipt of the request therefor and the accompanying reports required by subsection (a) of section 9, and amendments thereto, unless additional time is granted by the secretary of revenue. In conducting any program audit under this subsection, Kansas Inc. may use one or more contractors subject to the provisions of section 9, and amendments thereto.

New Section 9. (a) The secretary of revenue in consultation with the secretary of commerce shall develop a form which must be completed by any business that received any tax credit pursuant to the promoting employment across Kansas act and amendments thereto. Such form shall be developed no later than December 31, 2010, and shall request, at a minimum, the information required by paragraphs (1), (2), (3), (4), (5) and (6) of subsection (a) of K.S.A. 79-32, 243, and amendments thereto, and such other information as shall be required by the secretary of revenue and the secretary of commerce. Upon completion of the form, the business completing the form shall submit the form to the secretary of revenue. The contents of the completed form shall be confidential and not subject to disclosure under the open records act and amendments thereto. (b) The secretary of revenue is hereby authorized to share information received from businesses who complete the form required by subsection (a) with the secretary of commerce and Kansas Inc. subject to the following conditions:

(1) Except in accordance with proper judicial order, or as provided in subsection (c) or in subsection (g) of K.S.A. 46-1106 or K.S.A. 46-1114, and amendments thereto, it shall be unlawful for the any of the following to divulge, or to make known in any way, any particulars set forth or disclosed in the form required by subsection(a):

(A) The secretary of revenue including any agent or employee or former agent or employee thereof.

(B) the secretary of commerce including any agent or employee or former agent or employee thereof.

(C) The president and chief executive officer of Kansas Inc. including any agent, employee or contractor, including any agent of employee of such contractor, or former agent, employee or contractor, including any agent of employee of such former contractor, thereof.

(2) The secretary of revenue or the secretary of commerce or their respective designees may:

(A) Publish statistics, so classified as to prevent the identification of particular reports or returns and the items contained therein.

(B) Allow the inspection of the forms by the attorney general or other legal representatives of the state.

(C) Provide the post auditor access to all forms required by subsection (a) in accordance with and subject to the provisions of subsection (g) of K.S.A. 46-1106 or K.S.A. 46-1114, and amendments thereto.

(D) Disclose to the secretary of commerce the following:

(i) Specific taxpayer information related to financial information previously submitted by the taxpayer to the secretary of commerce concerning or relevant to any income tax credits, for purposes of verification of such information or evaluating the effectiveness of any tax credit program administered by the secretary of commerce; and

(ii) Findings related to a compliance audit conducted by Kansas Inc. at the request of the secretary of revenue pursuant to section 9, and amendments thereto.

(c) The provisions of this section shall expire July 1, 2015, unless the legislature acts to reenact such provisions. The provisions of this section shall be reviewed by the legislature prior to July 1, 2015.