

HOUSE BILL No. 2440

AN ACT concerning the emerging industry investment act; pertaining to the treatment of certain bioscience companies; amending K.S.A. 2013 Supp. 74-99b33 and 74-99b34 and repealing the existing sections.

Be it enacted by the Legislature of the State of Kansas:

Section 1. K.S.A. 2013 Supp. 74-99b33 is hereby amended to read as follows: 74-99b33. As used in the emerging industry investment act, and amendments thereto, the following words and phrases shall have the following meanings unless a different meaning clearly appears from the content:

(a) “Authority” means the Kansas bioscience authority as created by K.S.A. 2013 Supp. 74-99b04, and amendments thereto.

(b) “Base year taxation” means 95% of the 2003 state withholding taxes of bioscience employees working for bioscience companies and state universities currently located in or operating in the state. The base year taxation may be adjusted in future years to account for the addition of new bioscience companies and the identification of existing bioscience companies inadvertently omitted from prior determinations. When a bioscience company is added, the base year taxation shall be amended by 95% of the company’s 2003 state withholding taxes, if any.

(c) “Bioscience” means the use of compositions, methods and organisms in cellular and molecular research, development and manufacturing processes for such diverse areas as pharmaceuticals, medical therapeutics, medical diagnostics, medical devices, medical instruments, biochemistry, microbiology, veterinary medicine, plant biology, agriculture, industrial, environmental, and homeland security applications of bioscience and future developments in the biosciences. Bioscience includes biotechnology and life sciences.

(d) “Bioscience company” or “bioscience companies” means a corporation, limited liability company, S corporation, partnership, registered limited liability partnership, foundation, association, nonprofit entity, sole proprietorship, business trust, person, group or other entity that is engaged in the business of bioscience in the state and has business operations in the state, including, without limitation, research, development, sales, services, distribution or production directed towards developing or providing bioscience products or processes for specific commercial or public purposes but shall not include entities engaged in the distribution or retail sale of pharmaceuticals or other bioscience products. The authority and the secretary of revenue shall jointly determine whether an entity qualifies as a “bioscience company” based on verifiable evidence. One of the factors that shall be considered is whether a company has been identified by the department of labor by one of the following NAICS codes: 325411, 325412, 325413, 325414, 325193, 325199, 325311, 325320, 334516, 339111, 339112, 339113, 334510, 334517, 339115, 621511, 621512, 541710, 541380, 541940 and 622110. Such company shall be presumed to be a bioscience company unless the authority and the secretary of revenue agree, based on verifiable evidence, that the company is not engaged in the business of bioscience in the state. A company identified by another NAICS code may be determined to be a bioscience company by the authority and the secretary of revenue based on verifiable evidence that the company is engaged in the business of bioscience in the state. *From and after July 1, 2014, the authority and the secretary of revenue, based upon verifiable evidence, may determine that a company which has previously been determined to be a bioscience company shall no longer be considered to be a bioscience company for the purposes of the emerging industry investment act.*

(e) “Bioscience development and investment fund” means the fund created by K.S.A. 2013 Supp. 74-99b34, and amendments thereto.

(f) “Bioscience employee” means any employee, officer or director of a bioscience company who is employed in the 2003 tax year or after December 31, 2003, and who is also a state taxpayer and any employee of state universities who is associated with bioscience research in the 2003 tax year or after December 31, 2003, and who is also a state taxpayer.

(g) “Bioscience research” means any original investigation for the advancement of scientific or technological knowledge of bioscience and any activity that seeks to utilize, synthesize, or apply existing knowledge, information or resources to the resolution of a specific problem, question or issue of bioscience.

(h) “Biotechnology” means those fields focusing on technological de-

velopments in such areas as molecular biology, genetic engineering, genomics, proteomics, physiomics, nanotechnology, biodefense, biocomputing and bioinformatics and future developments associated with biotechnology.

(i) “Board” means the board of directors of the authority.

(j) “Eminent scholar” means world-class, distinguished and established investigators recognized nationally for their research, achievements and ability to garner significant federal funding on an annual basis. Eminent scholars are recognized for their scientific knowledge and entrepreneurial spirit to enhance the innovative research that leads to economic gains. Eminent scholars are either members of or likely candidates for the national academy of sciences or other prominent national academic science organizations.

(k) “Life sciences” means, without limitation, the areas of medical sciences, pharmaceutical sciences, biological sciences, zoology, botany, horticulture, ecology, toxicology, organic chemistry, physical chemistry and physiology and any future advances associated with the life sciences.

(l) “NAICS” means the north American industry classification system.

(m) “Rising star scholar” means up-and-coming distinguished investigators growing in their national reputations in their fields, who are active and demonstrate leadership in their associated professional societies, and who attract significant federal research grant support. Rising star scholars would be likely candidates for the national academy of science or other prominent national academic science organizations in the future.

(n) “State” means the state of Kansas.

(o) “State universities” includes state educational institutions as defined in K.S.A. 76-711, and amendments thereto, and the municipal university as defined in K.S.A. 74-3201b, and amendments thereto.

(p) “Subsequent year taxation” means 95% of all state withholding taxes payable by bioscience companies that commence operating in the state after December 31, 2003, and 95% of withholding associated with new bioscience employees added to bioscience companies and state universities and associated with growth of the existing bioscience employee withholding base after December 31, 2003.

(q) “Taxpayer” means a person, corporation, limited liability company, S corporation, partnership, registered limited liability partnership, foundation, association, nonprofit entity, sole proprietorship, business trust, group or other entity that is subject to the Kansas income tax act, K.S.A. 79-3201 et seq., and amendments thereto.

(r) “This act” means the emerging industry investment act.

Sec. 2. K.S.A. 2013 Supp. 74-99b34 is hereby amended to read as follows: 74-99b34. (a) The bioscience development and investment fund is hereby created. The bioscience development and investment fund shall not be a part of the state treasury and the funds in the bioscience development and investment fund shall belong exclusively to the authority.

(b) Distributions from the bioscience development and investment fund shall be for the exclusive benefit of the authority, under the control of the board and used to fulfill the purpose, powers and duties of the authority pursuant to the provisions of K.S.A. 2013 Supp. 74-99b01 et seq., and amendments thereto.

(c) The secretary of revenue and the authority shall establish the base year taxation for all bioscience companies and state universities. The secretary of revenue, the authority and the board of regents shall establish the number of bioscience employees associated with state universities and report annually and determine the increase from the taxation base annually. The secretary of revenue and the authority may consider any verifiable evidence, including, but not limited to, the NAICS code assigned or recorded by the department of labor for companies with employees in Kansas, when determining which companies should be classified as bioscience companies.

(d) (1) Except as provided in subsection (d)(2), (d)(3), ~~(h) or (i)~~, (i) or (j), for a period of 15 years from the effective date of this act, the state treasurer shall pay annually 95% of withholding above the base, as certified by the secretary of revenue, upon Kansas wages paid by bioscience employees to the bioscience development and investment fund. Such payments shall be reconciled annually. On or before the 10th day of each

month, the director of accounts and reports shall transfer from the state general fund to the bioscience development and investment fund interest earnings based on:

(A) The average daily balance of moneys in the bioscience development and investment fund for the preceding month; and

(B) the net earnings rate of the pooled money investment portfolio for the preceding month.

(2) (A) For fiscal year 2013, fiscal year 2014 and fiscal year 2015, the first \$1,000,000 that the secretary of revenue certifies to the state treasurer of the annual 95% of withholding above the base, upon Kansas wages paid by bioscience employees, shall be transferred by the director of accounts and reports from the state general fund to the following: The center of innovation for biomaterials in orthopaedic research — Wichita state university fund.

(B) There is hereby established in the state treasury the center of innovation for biomaterials in orthopaedic research — Wichita state university fund which shall be administered by Wichita state university. All moneys credited to the fund shall be used for research and development. All expenditures from the center of innovation for biomaterials in orthopaedic research — Wichita state university fund shall be made in accordance with appropriation acts and upon warrants of the director of accounts and reports issued pursuant to expenditures approved by the president of Wichita state university or by the person or persons designated by the president of Wichita state university.

(3) (A) For fiscal year 2013, fiscal year 2014 and fiscal year 2015, the next \$5,000,000 that the secretary of revenue certifies to the state treasurer of the annual 95% of withholding above the base, upon Kansas wages paid by bioscience employees above the first \$1,000,000 certified pursuant to subsection (d)(2)(A), shall be transferred by the director of accounts and reports from the state general fund to the following: The national bio agro-defense facility fund at Kansas state university.

(B) There is hereby established in the state treasury the national bio agro-defense facility fund which shall be administered by Kansas state university in accordance with the strategic plan adopted by the governor's national bio agro-defense facility steering committee. All moneys credited to the fund shall be used in accordance with the governor's national bio agro-defense facility steering committee's plan with the approval of the president of Kansas state university. All expenditures from the national bio agro-defense facility fund shall be made in accordance with appropriation acts and upon warrants of the director of accounts and reports issued pursuant to expenditures approved by the steering committee and the president of Kansas state university or by the person or persons designated by the president of Kansas state university.

(e) The cumulative amounts of funds paid by the state treasurer to the bioscience development and investment fund shall not exceed \$581,800,000.

(f) The division of post audit is hereby authorized to conduct a post audit in accordance with the provisions of the legislative post audit act, K.S.A. 46-1106 et seq., and amendments thereto.

(g) At the direction of the authority, the fund may be held in the custody of and invested by the state treasurer, provided that the bioscience development and investment fund shall at all times be accounted for in a separate report from all other funds of the authority and the state.

(h) During the fiscal years ending June 30, 2015, and June 30, 2016, the aggregate amount that is directed to be transferred from the state general fund to the bioscience development and investment fund pursuant to subsection (d)(1) plus interest earnings pursuant to subsection (d)(1) shall not exceed \$35,000,000 for each such fiscal year.

(i) During the fiscal year ending June 30, 2013, the aggregate amount that is directed to be transferred from the state general fund to the bioscience development and investment fund pursuant to subsection (d)(1) plus interest earnings pursuant to subsection (d)(1) shall not exceed \$12,287,267 for such fiscal year.

(j) During the fiscal year ending June 30, 2014, the aggregate amount that is directed to be transferred from the state general fund to the bioscience development and investment fund pursuant to subsection (d)(1) plus interest earnings pursuant to subsection (d)(1) shall not exceed \$10,000,000 for such fiscal year.

Sec. 3. K.S.A. 2013 Supp. 74-99b33 and 74-99b34 are hereby repealed.

Sec. 4. This act shall take effect and be in force from and after its publication in the statute book.

I hereby certify that the above BILL originated in the HOUSE, and passed that body

Speaker of the House.

Chief Clerk of the House.

Passed the SENATE _____

President of the Senate.

Secretary of the Senate.

APPROVED _____

Governor.