

Senate Substitute for HOUSE BILL No. 2509

AN ACT concerning the department of commerce; relating to administrative cost recovery fees for department-administered community finance, economic development and tax incentive programs; amending K.S.A. 74-5060 and K.S.A. 2015 Supp. 12-17,164 and 74-50,150 and repealing the existing sections.

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

New Section 1. (a) For purposes of recovering application processing, oversight, administrative and other costs, the secretary of commerce may assess an application fee of up to \$750 upon applications for economic development incentive programs administered wholly or in part by the secretary, including, but not limited to, the Kansas industrial training and retraining programs, K.S.A. 74-5065 et seq., and amendments thereto, the high performance incentive program, K.S.A. 74-50,131 et seq., and amendments thereto, the promoting employment across Kansas act, K.S.A. 2015 Supp. 74-50,210 et seq., and amendments thereto, and the job creation program fund, K.S.A. 2015 Supp. 74-50,224 et seq., and amendments thereto. The secretary may adopt rules and regulations to implement the provisions of this subsection.

(b) The secretary of commerce shall remit all moneys received by or for the secretary from such application fees and collected under this section 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 economic development incentive program application fee fund, which is hereby established in the state treasury and which may be used for costs to the department of commerce arising from administering such economic development incentive programs. All expenditures from the economic development incentive program application fee 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 secretary or by a person or persons designated by the secretary.

Sec. 2. K.S.A. 2015 Supp. 12-17,164 is hereby amended to read as follows: 12-17,164. (a) The governing body of a city may establish one or more STAR bond projects in any area within such city or wholly outside the boundaries of such city. A STAR bond project wholly outside the boundaries of such city must be approved by the board of county commissioners by the passage of a county resolution.

The governing body of a county may establish one or more STAR bond projects in any unincorporated area of the county.

The projects shall be eligible for financing by special obligation bonds payable from revenues described by ~~subsection (a)(1) of~~ K.S.A. 2015 Supp. 12-17,169(a)(1), and amendments thereto.

(b) Each STAR bond project shall first be approved by the secretary, if the secretary determines that the proposed project or complex sufficiently promotes, stimulates and develops the general and economic welfare of the state as described in K.S.A. 2015 Supp. 12-17,160, and amendments thereto. The secretary, upon approving the project, may approve such financing in an amount not to exceed 50% of the total costs including all project costs and any other costs related to the project. The proceeds of such STAR bond financing may only be used to pay for incurred project costs.

(c) For a city proposing to finance a major motorsports complex pursuant to ~~subsection (a)(1)(C) or (a)(1)(E) of~~ K.S.A. 2015 Supp. 12-17,169(a)(1)(C) or (a)(1)(E), and amendments thereto, the secretary, upon approving the project, may approve such financing in an amount not to exceed 50% of the STAR bond project costs.

(d) The secretary may approve a STAR bond project located in a STAR bond project district established by a city prior to May 1, 2003.

(e) A project shall not be granted to any business that proposes to relocate its business from another area of the state into such city or county, for the purpose of consideration for a STAR bond project provided by K.S.A. 2015 Supp. 12-17,160 et seq., and amendments thereto.

(f) A project shall not be approved by the secretary if the market study required by K.S.A. 2015 Supp. 12-17,166, and amendments thereto, indicates a substantial negative impact upon businesses in the project or complex market area or the granting of such project or complex would cause a default in the payment of any outstanding special obligation bond payable from revenues authorized pursuant to ~~subsection (a)(1) of~~ K.S.A. 2015 Supp. 12-17,169(a)(1), and amendments thereto.

(g) The maximum maturity of special obligation bonds payable primarily from revenues described by ~~subsection (a)(1) of~~ K.S.A. 2015 Supp. 12-17,169(a)(1), and amendments thereto, to finance STAR bond projects pursuant to this section shall not exceed 20 years.

(h) The secretary shall not approve any application for STAR bond project financing which is submitted by a city or county more than one year after the STAR bond project district in which the STAR bond project is located has been established.

(i) *For the purpose of recovering the costs of the secretary and the department arising from fulfilling administrative, review, approval, oversight and other responsibilities under the STAR bonds financing act and from providing assistance to cities, counties and private businesses in relation to STAR bond projects, the secretary may assess an administrative fee of up to 1%, not to exceed \$200,000, of the amount of the special obligation bonds payable from revenues described by K.S.A. 2015 Supp. 12-17,169(a)(1), and amendments thereto, issued or reissued for STAR bond projects. The secretary may also recover any actual costs incurred by the secretary in excess of the fee. The fee, and any actual costs incurred by the secretary in excess of the fee, shall be paid to the secretary from the proceeds of such bonds. All such moneys received by the secretary shall be remitted 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 STAR bond administrative fee fund, which is hereby created in the state treasury. All expenditures from the STAR bond administrative fee 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 secretary or a person or persons designated by the secretary.*

Sec. 3. K.S.A. 74-5060 is hereby amended to read as follows: 74-5060.

(a) The secretary shall determine the state ceiling for each calendar year in accordance with the formula provided therefor in the code and, except as otherwise provided in K.S.A. 74-5063, and amendments thereto, shall allocate the state ceiling among governmental issuers in accordance with the provisions of this section.

(b) The secretary shall reserve until October 15 of each year: (1) An amount equal to \$5,000,000 for allocation in accordance with the provisions of section 141(b)(5) of the code for private activity use of a portion of the proceeds of bonds issued by governmental issuers; (2) an amount equal to \$5,000,000 for allocation for qualified student loan bonds as defined in section 144(b) of the code; and (3) an amount equal to \$25,000,000 for allocation for qualified small issue bonds as defined in section 144(a) of the code. On and after October 15 of each year, any portion of the state ceiling remaining unused or uncommitted shall be available for allocation to governmental issuers by the secretary without regard to the reservations provided for in this subsection.

(c) Prior to any issuance of private activity bonds subject to the state ceiling, a governmental issuer shall submit to the secretary on a form prescribed by the secretary a written application for an allocation of the state ceiling for such issue.

(d) Subject to the provisions of subsection (b), the secretary shall approve each properly filed application for an allocation for qualified small issue bonds of \$5,000,000 or less on the basis of the chronological order of receipt of applications. If an application is for an allocation in excess of \$5,000,000, the secretary may approve the total amount, approve a partial amount or reject the application.

(e) Within five business days after receipt of an application for an allocation, the secretary shall notify the governmental issuer in writing that: (1) The application has been approved and shall specify the amount approved; ~~or~~; (2) the application has been denied; or (3) the application has been placed on hold pending receipt of additional information with respect to the application or pending a review of the effect approval of the application will have on the state ceiling.

(f) Unless an extension or a carryforward election is approved by the secretary, an approved allocation, or any portion thereof, that is not utilized by the issuance of the private activity bonds for which the allocation was approved shall expire at the earliest of: (1) The time of 11:59 p.m.

on the date which is 60 days after the date the notification of the approved allocation is mailed to the governmental issuer or on such other date as the secretary may specify in the notification; ~~or~~; (2) the date upon which the approved allocation is voluntarily surrendered to the secretary by the governmental issuer; or (3) the time of 11:59 p.m. on December 1 of the calendar year in which the allocation was approved.

(g) A governmental issuer may request an extension of the expiration date of an approved allocation by filing a written application therefor with the secretary. Any such application must be received by the secretary not less than two days prior to the expiration date of the approved allocation. In such instances, the secretary may approve an extension for a period ending at the earliest of: (1) The time of 11:59 p.m. on the date which is 30 days after the initial expiration date; ~~or~~; (2) the date upon which the approved allocation is voluntarily surrendered to the secretary by the governmental issuer; or (3) the time of 11:59 p.m. on December 1 of the calendar year in which the allocation was approved. The secretary shall notify the governmental issuer within five business days after receipt of the application if the request for extension has been approved or denied. If the private activity bonds for which an extension has been approved are not issued on or before the last day of the extension period approved by the secretary, the approved allocation shall expire unless a carryforward election is approved by the secretary.

(h) Notwithstanding any other provision of this section, if an approved allocation or an approved extension period expires on December 1, the secretary may grant an extension, or a further extension, for any period ending not later than the time of 11:59 p.m. on December 31 of the calendar year in which the allocation was approved.

(i) The secretary shall provide to the governmental issuer on or prior to the date of issuance of any private activity bonds for which an approved allocation has not expired a certification that such bonds meet the requirements of section 146 of the code.

(j) On or after December 16 of each calendar year, the secretary may approve a carryforward election with respect to an approved allocation or any approved extension if the governmental issuer, in writing: (1) Requests such action; and (2) indicates that the private activity bonds for which the allocation was approved cannot be issued during the calendar year in which the allocation was approved. Such approved carryforward election shall be made by the governmental issuer by means of a statement, signed by a duly authorized official of such issuer. Such statement shall be filed with the secretary and with the internal revenue service in accordance with section 146(f) of the code. A governmental issuer may elect to carryforward such issuing authority only for qualified mortgage bonds, mortgage credit certificates, qualified student loan bonds, qualified redevelopment bonds, as defined in sections 142, 143 and 144 of the code, or for bonds to finance a project described in section 141(e)(1)(A) of the code. In no event shall such carryforward be effective for a period longer than permitted by section 146(f) of the code.

(k) If an approved allocation expires, a governmental issuer may submit another application for an allocation of the state ceiling for the same purpose for which the expired allocation was approved. Any such applications shall be reviewed in order of receipt with no preference or priority being given as a result of the prior application and allocation.

(l) (1) For purposes of recovery of program oversight and administrative costs, the secretary may assess an administrative application fee of up to 1%, not to exceed \$200,000, of the private activity bond issuance amount requested. The secretary may also recover any actual costs incurred by the secretary in excess of the fee. At the secretary's discretion, the fee, and any actual costs incurred by the secretary in excess of the fee, may be made payable by the governmental issuer or out of the bond proceeds or both. If assessed in whole or in part upon the governmental issuer, the governmental issuer may require payment of such amount or a portion thereof from the conduit borrower or borrowers if requiring such payment from the conduit borrower or borrowers is approved by the secretary. In no case shall the fee and any actual costs in excess of the fee assessed by the secretary exceed applicable limitations imposed by the code. The secretary may issue rules and regulations to implement the provisions of this subsection.

(2) The secretary shall remit all moneys received by or for the sec-

retary from such administrative application fees, and any actual costs incurred by the secretary in excess of the fee, and collected under this subsection 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 private activity bond administration fee fund, which is hereby established in the state treasury. All expenditures from the private activity bond administration fee 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 secretary or by a person or persons designated by the secretary.

Sec. 4. K.S.A. 2015 Supp. 74-50,150 is hereby amended to read as follows: 74-50,150. (a) There is hereby established in the state treasury the \$5,000,000 state affordable airfare fund, which shall be known and referred to as the state affordable airfare fund and which shall be administered by the secretary of commerce. In accordance with the provisions of appropriation acts, moneys shall be transferred to the state affordable airfare fund from the state general fund or one or more special revenue funds in the state treasury as specified by appropriation acts. *Subject to appropriation acts, the secretary is authorized to designate or deduct from such moneys transferred to the state affordable airfare fund an annual administrative fee not to exceed 2% of such moneys transferred, which administrative fee shall be remitted to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto, and the entire amount deposited by the state treasurer in the state treasury to the credit of the state affordable airfare administrative fee fund, which is hereby created in the state treasury.* All expenditures from the state affordable airfare fund shall be for the program to provide more air flight options, more competition for air travel and affordable air fares for Kansas, including a regional airport in western Kansas. All expenditures from the state affordable airfare 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 secretary of commerce or the designee of the secretary.

(b) The moneys credited to the state affordable airfare fund shall be disbursed as an annual grant by the secretary of commerce to the regional economic area partnership (REAP) and shall be used for the development and implementation of a program to provide more air flight options, more competition for air travel and affordable air fares for Kansas, including a regional airport in western Kansas. Each annual grant shall be matched by moneys received by the regional economic area partnership (REAP) from local units of government or private entities on the basis of 75% from the state affordable airfare fund to 25% from local units of government or private entities.

(c) Annually, beginning by January 15, 2008, at the beginning of each regular session of the legislature thereafter, the regional economic area partnership (REAP) shall evaluate and present a report on the effectiveness of this program to the house of representatives committee on appropriations and the senate committee on ways and means. Commencing with the regular session in 2008, the regional economic area partnership (REAP) shall prepare and submit a report on the expenditures of the state annual grant and local matching moneys under the program and the results obtained for such expenditures to the legislature at the beginning of each regular session.

(d) During the interim between regular sessions of the legislature, commencing with the 2006 legislative interim period, the legislative budget committee shall study and review the activities of the regional economic area partnership (REAP) under the program to provide more air flight options, more competition for air travel and affordable air fares for Kansas, including a regional airport in western Kansas.

(e) All expenditures from the state affordable airfare administrative fee fund shall be for the purpose of recovering costs incurred by the secretary in the course of administering the state affordable airfare fund and shall be made in accordance with appropriation acts upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the secretary or by a person or persons designated by the secretary.

Sec. 5. K.S.A. 74-5060 and K.S.A. 2015 Supp. 12-17,164 and 74-50,150 are hereby repealed.

Sec. 6. 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 was adopted by that body

HOUSE adopted
Conference Committee Report _____

Speaker of the House.

Chief Clerk of the House.

Passed the SENATE
as amended _____

SENATE adopted
Conference Committee Report _____

President of the Senate.

Secretary of the Senate.

APPROVED _____

Governor.