

## **Kansas Department of Commerce**

### **Secretary Antonio Soave – Neutral testimony regarding SB 493**

**Prepared for the Senate Commerce Committee**  
**Room 548-S, The Statehouse**  
**March 15, 2016**

The Kansas Department of Commerce is neutral regarding Senate Bill 493, which would implement application and administrative fees for certain economic development programs. While Commerce agrees that the implementation of fees will allow us to cover our costs more efficiently, we believe that additional research is necessary to ensure that fees are not cost prohibitive.

SB 493 would implement a \$750 fee for businesses applying for the Promoting Employment Across Kansas (PEAK) program and the High Performance Incentive Program (HPIP). The Department does believe it is necessary to assess a fee to recover the cost of processing applications, but we would like to perform further assessments to determine if these costs rise as high as \$750 per application.

SB 493 also allows Commerce to assess a one percent fee from issuing Sales Tax And Revenue (STAR) Bonds and a five percent fee from Private Activity Bonds. The agency agrees with both of these fees (point two in the attached memorandum concerning STAR Bond Reform recommends such a cost recovery measure). However, Commerce would like to retain flexibility to use a lower percentage for projects that do not require the full amount to cover the Department's costs.

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## Memorandum

**From: Secretary Antonio J. Soave**

**Re: Ten Points for STAR Bond Reform Legislation**

**March 14, 2016**

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1. Internal due diligence required within the Department of Commerce: An internal due diligence process and generation of pro formas is required so that the Department of Commerce can assess the actual viability of a project.
2. Independent feasibility study to be commissioned directly by the Department of Commerce: Feasibility studies should be commissioned by the Department rather than the developer. In return, Commerce should be able to recover one percent (1%) to two percent (2%) of project costs to be transferred into EDIF. This process provides a two-fold advantage of controlling the Department's cost and time and guaranteeing that feasibility numbers are accurate and trustworthy.
3. Capping of soft costs: Soft costs should be capped at no more than three percent (3%). These include all engineering, design, legal, consulting, and accounting costs.
4. Requirement of RFP for construction and sealed bid: The construction phase should have an RFP process to eliminate self-dealing and reduce costs.
5. Requirement of private sector to place a percentage into escrow prior to the deal: In order to meet the requirement of private sector funding being at least 51 percent of a project's costs, developers must be able to prove that will leverage actual assets and money to fund the project. A portion of these funds should be placed into an escrow account prior to the deal moving forward. A small percentage of this portion should be forfeited if the developer does not meet his requirements.
6. Retention of carried equity interest by the State so that State has guarantees: Additional fees can be recovered by the state retaining proportional ownership of land and buildings and by the state getting a percentage of gross receipts until the bonds have been repaid. This is to reflect the fact that the state is paying for a substantial portion of a project's costs and should have its interests protected until such time as it has recouped its investment. Once the State has recovered all of its money, then the developer may have a right of first refusal to purchase the State's interest at a strike price or fair market value, whichever is greater at the time of exercising the option.
7. Requirement of timelines and milestones: A clause should be adopted that requires that a project starts within a reasonable timeframe or expires. Likewise, projects should have to be completed within a reasonable timeframe or revert to the state. The State should require a series of timelines and milestones for the developers.
8. Additional requirement of escrow pertaining to the project itself: The state should have the ability to require that the developers put a portion of the bonds into escrow until successful completion of a project, with a penalty imposed upon those developers who do not meet their obligations.
9. Expansion of STAR bonds into blighted and urban areas: The threshold for projects in rural and distressed urban areas should be lowered. Smaller projects in these areas can have an impact just as great as larger projects in other areas, and the state would benefit from the flexibility to use STAR Bonds in these areas.
10. No monetary overlays or borrowing from another district: The State can adopt the position that there will be no monetary "overlying" and/or borrowing from another STAR Bond district.