

Substitute for HOUSE BILL No. 2003

AN ACT concerning the bioscience authority; emerging industry investment act; bioscience research and development voucher — federal fund; amending K.S.A. 2004 Supp. 74-99b33, 74-99b34 and 74-99b68 and repealing the existing sections.

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

Section 1. K.S.A. 2004 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. 2004 Supp. 74-99b04, and amendments thereto.

(b) “Base year taxation” means ~~the 2003 state taxes payable by all bioscience companies, state universities and~~ 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 ~~and are identified~~ *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, ~~32532~~ 325320, 334516, 339111, 339112, 339113, 334510, 334517, 339115, 621511, 621512, ~~54171~~ 541710, ~~54138~~ 541380, ~~54194~~ 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.*

(e) “Bioscience development and investment fund” means the fund created by K.S.A. 2004 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 developments in such areas as molecular biology, genetic engineering, genomics, proteomics, physiomics, nanotechnology, biodefense, biocomput-

ing 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 income taxes” means all of the taxes levied pursuant to K.S.A. 79-3201 et seq., and amendments thereto.~~

~~(p) “State taxes” means all taxes on property, sales and use, license, individual income tax and corporate net income tax pursuant to law except for property taxes levied for schools.~~

~~(q) “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.~~

~~(r) (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.

~~(s) (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.

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

Sec. 2. K.S.A. 2004 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. 2004 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) For a period of 15 years from the effective date of this act, ~~the state treasurer shall pay to the bioscience development and investment~~

~~fund the state taxes in excess of the base year taxation from all bioscience companies as certified by the secretary of revenue.~~

~~(c) In addition,~~ 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. *The state treasurer may make estimated payments to the bioscience authority more frequently based on estimates provided by the secretary of revenue and 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:

- (1) The average daily balance of moneys in the bioscience development and investment fund for the preceding month; and
- (2) the net earnings rate of the pooled money investment portfolio for the preceding month.

(e) The cumulative amounts of funds paid by the state treasurer to the bioscience development and investment fund shall not exceed \$581.8 million.

(f) The division of post audit is hereby authorized to conduct a post audit in accordance with the provisions of the state post audit act to 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.

Sec. 3. K.S.A. 2004 Supp. 74-99b68 is hereby amended to read as follows: 74-99b68. (a) There is hereby established in the state treasury the bioscience research and development voucher — federal fund for the purpose of providing matching federal moneys to enable qualified companies to undertake authority approved bioscience research and development projects in partnership with bioscience research institutions.

(b) The bioscience research and development voucher — federal fund shall receive all federal moneys obtained from federal sources for bioscience research and development.

(c) Federal moneys deposited in the bioscience research and development voucher — federal fund shall be disbursed by the state treasurer with the consent of the chairperson of the authority.

(d) 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 research and development voucher — federal fund interest earnings based on ~~the~~:

- (1) *The average daily balance of moneys in the bioscience research and development voucher — federal fund for the preceding month; and*
- (2) *the net earnings rate of the pooled money investment portfolio for the preceding month.*

Sec. 4. K.S.A. 2004 Supp. 74-99b33, 74-99b34 and 74-99b68 are hereby repealed.

Sec. 5. 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

HOUSE concurred in
SENATE amendments _____

Speaker of the House.

Chief Clerk of the House.

Passed the SENATE
as amended _____

President of the Senate.

Secretary of the Senate.

APPROVED _____

Governor.