

SENATE Substitute for Substitute for HOUSE BILL No. 2538

AN ACT concerning economic development; pertaining to the promoting employment across Kansas act; pertaining to qualifications for benefits under such act; duties of secretary of revenue; reporting requirements; amending K.S.A. 2009 Supp. 74-50,103, 74-50,108, 74-50,210, 74-50,211, 74-50,212, 74-50,213, 74-50,214, 74-8010, 79-32,153 and 79-32,160a and repealing the existing sections.

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

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

(b) It shall be the intent of this act to foster economic development and the creation of new jobs and opportunities for the citizens of Kansas ~~through incentivizing the repatriation of business facilities, other operations and jobs from foreign countries~~ and to incentivize the ~~relocation~~ location of business facilities, other operations and jobs ~~from other states~~ ~~to~~ in Kansas. The primary objective of this legislation is economic development for Kansas. ~~The state of Kansas, the secretary of the department of commerce and the department of commerce shall solicit and approve applications by qualified companies pursuant to this act.~~

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

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

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

(c) “Department” means the department of commerce.

(d) “*Expanding business*” means *the expansion of an existing business facility, office, department or other operation located in the state of Kansas and locating in Kansas the jobs directly related to such new business facility, office, department or other operation.*

~~(d)~~ (e) “High-impact project” means a business development project for which the qualified company shall meet the requirements of subsection (c) of K.S.A. 2009 Supp. 74-50,212, and amendments thereto.

~~(e)~~ “NAICS” means the North American industry classification system.

(f) “Metropolitan county” means the county of Douglas, Johnson, Leavenworth, Sedgwick, Shawnee or Wyandotte.

(g) “NAICS” means the North American industry classification system.

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

(i) “New business” means a facility, plant, division, office, department, production line, production shift or other business operations that did not exist in Kansas prior to the submission of an application for benefits under this act and that provides documentation of such to the satisfaction of the secretary.

~~(g)~~ (j) “New employee” means a person newly employed by the qualified company in the qualified company’s business operating in Kansas during the taxable year for which benefits are sought under K.S.A. 2009 Supp. 74-50,212, and amendments thereto. A person shall be deemed to be so engaged if such person performs duties in Kansas in connection with the operation of the Kansas business on: (1) A regular, full-time basis; or (2) a part-time basis, provided such person is customarily performing such duties at least 20 hours per week throughout the taxable year. Employees ~~acquired or~~ relocated to Kansas ~~from another state~~ through an expansion or relocation of ~~a~~ *an existing* business operation to Kansas from another state *or foreign country* shall be considered as new employees.

~~(h)~~ (k) “Non-metropolitan county” means any county that is not a metropolitan county.

~~(i)~~ (l) (1) “Qualified company” means any *for-profit* corporation, partnership or other entity, ~~organized for profit~~ making available to its full-time employees adequate health insurance coverage and paying at

least 50% of the premium for such health insurance, which meets the requirements of K.S.A. 2009 Supp. 74-50,212, and amendments thereto, *and submits an application for benefits meeting requirements established by the secretary.*

(2) “Qualified company” shall not include any corporation, partnership or other entity: (A) Which is identified by any of the following NAICS code groups, sectors or subsectors:

(i) Industry group 7132 or 8131;

(ii) sectors 44, 45, 61, 92 or 221 (including water and sewer services);

or

(iii) subsector 722;

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

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

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

(3) Notwithstanding any provision of this subsection, except for paragraphs (2)(B), (C) and (D), a company may be deemed a qualified company if such company’s headquarters or administrative offices located in this state serve an international or multi-state territory and such company meets the requirements of K.S.A. 2009 Supp. 74-50,212, and amendments thereto.

(4) *Notwithstanding any provision of this subsection, except for paragraphs (2)(B), (C) and (D), any company may be deemed to be a qualified company if such company is an expanding business.*

(j) (m) “Secretary” means the secretary of the department of commerce.

Sec. 3. K.S.A. 2009 Supp. 74-50,212 is hereby amended to read as follows: 74-50,212. (a) In order to qualify for benefits under this act a qualified company shall:

(1) 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 ~~from~~ *directly related to* such new business facility, office, department or other operation ~~to~~ *in* Kansas; or

(2) *expand an existing business facility, office, department or other operation located in the state of Kansas and locate the jobs directly related to such new business facility, office, department or other operation in Kansas, except that no tax benefit shall be claimed prior to January 1, 2012.*

A qualified company may contract with an unrelated third party to perform services whereby the third party serves as the legal employer of the new employees providing services to the qualified company and such services are performed in Kansas and the third party and the new employees are subject to Kansas state withholding.

(b) Any qualified company, *approved by the secretary for benefits pursuant to paragraph (a)(1)*, that locates its business operation in a metropolitan county and will hire at least 10 new employees within two years from the date the qualified company enters into an agreement with the secretary pursuant to K.S.A. 2009 Supp. 74-50,213, and amendments thereto, or any qualified company, *approved by the secretary for benefits pursuant to paragraph (a)(1)*, that locates its business operation in a non-metropolitan county and will hire at least five new employees within two years from the date the qualified company enters into an agreement with the secretary pursuant to K.S.A. 2009 Supp. 74-50,213, and amendments thereto, shall: (1) Be eligible to retain 95% of the qualified company’s Kansas payroll withholding taxes for such new employees *being paid the county median wage or higher* for a period of up to:

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

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

~~(3) seven years if the new employees are compensated at a rate equal to at least 120% of the county average wage.~~

(A) *Five years if the median wage paid to the new employees is equal to at least 100% of the county median wage;*

(B) *six years if the median wage paid to the new employees is equal to at least 110% of the county median wage;*

(C) *seven years if the median wage paid to the new employees is equal to at least 120% of the county median wage; or*

(2) *be eligible to retain 95% of the qualified company's Kansas payroll withholding taxes for such new employees being paid the county median wage or higher for a period of up to five years if the county median wage paid to the new employees is equal to at least 100% of the NAICS code industry average wage.*

(c) Any qualified company, *approved by the secretary for benefits pursuant to paragraph (a)(1)*, that engages in a high-impact project whereby the qualified company will hire at least 100 new employees within ~~five~~ two years from the date the qualified company enters into an agreement with the secretary pursuant to K.S.A. 2009 Supp. 74-50,213, and amendments thereto, shall be eligible to retain 95% of the qualified company's Kansas payroll withholding taxes for such new employees *being paid the county median wage or higher* for a period of up to:

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

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

~~(3) nine years if the new employees are compensated at a rate equal to at least 120% of the county average wage; or~~

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

(1) *Seven years if the median wage paid to the new employees is equal to at least 100% of the county median wage;*

(2) *eight years if the median wage paid to the new employees is equal to at least 110% of the county median wage;*

(3) *nine years if the median wage paid to the new employees is equal to at least 120% of the county median wage; or*

(4) *ten years if the median wage paid to the new employees is equal to at least 140% of the county median wage.*

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

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

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

(c) Upon approval of an application for benefits under this act, the secretary may enter into an agreement with the qualified company for benefits under this act. If necessary, the secretary may also enter into an agreement with any third party described in subsection (a) of K.S.A. 2009 Supp. 74-50,212, and amendments thereto, or such third party may be a party to the agreement between the qualified company and the secretary. The agreement shall commit the secretary to certify to the secretary of revenue: (1) That the qualified company is eligible to receive benefits under this act; (2) the number of new employees hired by the qualified company; and (3) the amount of gross wages being paid to each new employee.

(d) The agreement between the qualified company and the secretary

shall be entered into before any benefits may be provided under this act, and shall specify that should the qualified company fail to comply with the terms and conditions set forth in the agreement, or fails to comply with the provisions set forth in this act, the secretary may terminate the agreement, and the qualified company shall not be entitled to any further benefits provided under this act and shall be required to remit to the state an amount equal to the aggregate Kansas payroll withholding taxes retained by the qualified company, or remitted to the qualified company by a third party, pursuant to this act as of the date the agreement is terminated.

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

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

(g) *Under no circumstances shall the total amount of benefits authorized or granted to the aggregate of all expanding businesses, as such term is defined in K.S.A. 2009 Supp. 74-50,211, and amendments thereto, under this act exceed \$4,800,000 in any fiscal year commencing on or after July 1, 2011.*

(h) The secretary shall adopt rules and regulations necessary to implement and administer the provisions of this act.

Sec. 5. 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:

(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; *and*

(2) *a form designed by the secretary of revenue pursuant to section 11, and amendments thereto.*

The completed form shall be submitted electronically or in the manner prescribed by the secretary of revenue.

(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.

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, hu-

man 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. *Subject to the provisions of subsection (b),* 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.

(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 services 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 which may be requested by either the secretary of revenue or the secretary of commerce and the acquisition of any necessary software 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.*

Sec. 8. 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 11, 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 11, 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 11, and amendments thereto.*

Sec. 9. K.S.A. 2009 Supp. 79-32,153 is hereby amended to read as follows: 79-32,153. (a) For taxable years commencing after December 31, 1997, any taxpayer who shall invest in a qualified business facility, as defined in subsection (b) of K.S.A. 79-32,154, and amendments thereto, and effective for tax years commencing after December 31, 2010, located in an area other than a metropolitan county as defined in either K.S.A. 2009 Supp. 74-50,114 or 74-50,211, and amendments thereto, shall be allowed a credit for such investment, in an amount determined under subsection (b) against the tax imposed by the Kansas income tax act, the premium tax or privilege fees imposed pursuant to K.S.A. 40-252, and amendments thereto or the privilege tax as measured by net income of financial institutions imposed pursuant to chapter 79, article 11 of the Kansas Statutes Annotated for the taxable year during which commencement of commercial operations, as defined in subsection (f) of K.S.A. 79-32,154, and amendments thereto, occurs at such qualified business facility, and for each of the nine succeeding taxable years. No credit shall be allowed under this section unless the number of qualified business facility employees, as determined under subsection (d) of K.S.A. 79-32,154, and amendments thereto, engaged or maintained in employment at the qualified business facility as a direct result of the investment by the taxpayer for the taxable year for which the credit is claimed equals or exceeds two. Where an employee performs services for the taxpayer outside the qualified business facility, the employee shall be considered engaged or maintained in employment at the qualified business facility if (1) the employee's service performed outside the qualified business facility is incidental to the employee's service inside the qualified business facility, or (2) the base of operations or, the place from which the service is directed or controlled, is at the qualified business facility.

(b) The credit allowed by subsection (a) for any taxpayer who invests in a qualified business facility shall be a portion of the tax, but not in excess of 50% of such tax, otherwise imposed on or measured by the taxpayer's qualified business facility income, as defined in subsection (g) of K.S.A. 79-32,154, and amendments thereto, for the taxable year for which such credit is allowed. Such portion shall be an amount equal to the sum of the following:

(1) One hundred dollars for each qualified business facility employee determined under K.S.A. 79-32,154, and amendments thereto; plus

(2) one hundred dollars for each \$100,000, or major fraction thereof (which shall be deemed to be 51% or more), in qualified business facility investment as determined under K.S.A. 79-32,154, and amendments thereto.

(c) For tax years commencing after December 31, 2005, any taxpayer claiming credits pursuant to this section, as a condition for claiming and qualifying for such credits, shall provide information pursuant to K.S.A. 2009 Supp. 79-32,243, and amendments thereto, as part of the tax return in which such credits are claimed. Such credits shall not be denied solely on the basis of the contents of the information provided by the taxpayer pursuant to K.S.A. 2009 Supp. 79-32,243, and amendments thereto.

(d) No credit shall be allowed under this section for investment in a public utility, as such term is defined in K.S.A. 66-104, and amendments thereto.

Sec. 10. K.S.A. 2009 Supp. 79-32,160a is hereby amended to read as follows: 79-32,160a. (a) For taxable years commencing after December 31, 1999, any taxpayer who shall invest in a qualified business facility, as defined in subsection (b) of K.S.A. 79-32,154, and amendments thereto, *and effective for tax years commencing after December 31, 2010, located in an area other than a metropolitan county as defined in either K.S.A. 2009 Supp. 74-50,114 or 74-50,211, and amendments thereto*, and also meets the definition of a business in subsection (b) of K.S.A. 74-50,114, and amendments thereto, shall be allowed a credit for such investment, in an amount determined under subsection (b) or (c), as the case requires, against the tax imposed by the Kansas income tax act or where the qualified business facility is the principal place from which the trade or business of the taxpayer is directed or managed and the facility has facilitated the creation of at least 20 new full-time positions, against the premium tax or privilege fees imposed pursuant to K.S.A. 40-252, and amendments thereto, or as measured by the net income of financial institutions imposed pursuant to chapter 79, article 11 of the Kansas Statutes Annotated, for the taxable year during which commencement of commercial operations, as defined in subsection (f) of K.S.A. 79-32,154, and amendments thereto, occurs at such qualified business facility. In the case of a taxpayer who meets the definition of a manufacturing business in subsection (d) of K.S.A. 74-50,114, and amendments thereto, no credit shall be allowed under this section unless the number of qualified business facility employees, as determined under subsection (d) of K.S.A. 79-32,154, and amendments thereto, engaged or maintained in employment at the qualified business facility as a direct result of the investment by the taxpayer for the taxable year for which the credit is claimed equals or exceeds two. In the case of a taxpayer who meets the definition of a nonmanufacturing business in subsection (f) of K.S.A. 74-50,114, and amendments thereto, no credit shall be allowed under this section unless the number of qualified business facility employees, as determined under subsection (d) of K.S.A. 79-32,154, and amendments thereto, engaged or maintained in employment at the qualified business facility as a direct result of the investment by the taxpayer for the taxable year for which the credit is claimed equals or exceeds five. Where an employee performs services for the taxpayer outside the qualified business facility, the employee shall be considered engaged or maintained in employment at the qualified business facility if (1) the employee's service performed outside the qualified business facility is incidental to the employee's service inside the qualified business facility, or (2) the base of operations or, the place from which the service is directed or controlled, is at the qualified business facility.

(b) The credit allowed by subsection (a) for any taxpayer who invests in a qualified business facility which is located in a designated nonmetropolitan region established under K.S.A. 74-50,116, and amendments thereto, on or after the effective date of this act, shall be a portion of the income tax imposed by the Kansas income tax act on the taxpayer's Kansas taxable income, the premium tax or privilege fees imposed pursuant to K.S.A. 40-252, and amendments thereto, or the privilege tax as measured by the net income of financial institutions imposed pursuant to chapter 79, article 11 of the Kansas Statutes Annotated, for the taxable year for which such credit is allowed, but in the case where the qualified business facility investment was made prior to January 1, 1996, not in excess of 50% of such tax. Such portion shall be an amount equal to the sum of the following:

(1) Two thousand five hundred dollars for each qualified business facility employee determined under K.S.A. 79-32,154, and amendments thereto; plus

(2) one thousand dollars for each \$100,000, or major fraction thereof, which shall be deemed to be 51% or more, in qualified business facility investment, as determined under K.S.A. 79-32,154, and amendments thereto.

(c) The credit allowed by subsection (a) for any taxpayer who invests in a qualified business facility, which is not located in a nonmetropolitan region established under K.S.A. 74-50,116, and amendments thereto, *and effective for tax years commencing after December 31, 2010, located in an area other than a metropolitan county as defined in either K.S.A. 2009 Supp. 74-50,114 or 74-50,211, and amendments thereto*, and which also meets the definition of business in subsection (b) of K.S.A. 74-50,114, and amendments thereto, on or after the effective date of this act, shall be a portion of the income tax imposed by the Kansas income tax act on the taxpayer's Kansas taxable income, the premium tax or privilege fees imposed pursuant to K.S.A. 40-252, and amendments thereto, or the privilege tax as measured by the net income of financial institutions imposed pursuant to chapter 79, article 11 of the Kansas Statutes Annotated, for the taxable year for which such credit is allowed, but in the case where the qualified business facility investment was made prior to January 1, 1996, not in excess of 50% of such tax. Such portion shall be an amount equal to the sum of the following:

(1) One thousand five hundred dollars for each qualified business facility employee as determined under K.S.A. 79-32,154, and amendments thereto; and

(2) one thousand dollars for each \$100,000, or major fraction thereof, which shall be deemed to be 51% or more, in qualified business facility investment as determined under K.S.A. 79-32,154, and amendments thereto.

(d) The credit allowed by subsection (a) for each qualified business facility employee and for qualified business facility investment shall be a one-time credit. If the amount of the credit allowed under subsection (a) exceeds the tax imposed by the Kansas income tax act on the taxpayer's Kansas taxable income, the premium tax and privilege fees imposed pursuant to K.S.A. 40-252, and amendments thereto, or the privilege tax as measured by the net income of financial institutions imposed pursuant to chapter 79, article 11 of the Kansas Statutes Annotated for the taxable year, or in the case where the qualified business facility investment was made prior to January 1, 1996, 50% of such tax imposed upon the amount which exceeds such tax liability or such portion thereof may be carried over for credit in the same manner in the succeeding taxable years until the total amount of such credit is used. Except that, before the credit is allowed, a taxpayer, who meets the definition of a manufacturing business in subsection (d) of K.S.A. 74-50,114, and amendments thereto, shall recertify annually that the net increase of a minimum of two qualified business facility employees has continued to be maintained and a taxpayer, who meets the definition of a nonmanufacturing business in subsection (f) of K.S.A. 74-50,114, and amendments thereto, shall recertify annually that the net increase of a minimum of five qualified business employees has continued to be maintained.

(e) Notwithstanding the foregoing provisions of this section, any taxpayer qualified and certified under the provisions of K.S.A. 74-50,131, and amendments thereto; which, prior to making a commitment to invest in a qualified Kansas business, has filed a certificate of intent to invest in a qualified business facility in a form satisfactory to the secretary of commerce; and that has received written approval from the secretary of commerce for participation and has participated, during the tax year for which the exemption is claimed, in the Kansas industrial training, Kansas industrial retraining or the state of Kansas investments in lifelong learning program or is eligible for the tax credit established in K.S.A. 74-50,132, and amendments thereto, shall be entitled to a credit in an amount equal to 10% of that portion of the qualified business facility investment which exceeds \$50,000 in lieu of the credit provided in subsection (b)(2) or (c)(2) without regard to the number of qualified business facility employees engaged or maintained in employment at the qualified business facility. The credit allowed by this subsection shall be a one-time credit. If the amount thereof exceeds the tax imposed by the Kansas income tax act on the taxpayer's Kansas taxable income or the premium tax or privilege fees imposed pursuant to K.S.A. 40-252, and amendments thereto, or the priv-

ilege tax as measured by net income of financial institutions imposed pursuant to chapter 79, article 11 of the Kansas Statutes Annotated for the taxable year, the amount thereof which exceeds such tax liability may be carried forward for credit in the succeeding taxable year or years until the total amount of the tax credit is used, except that no such tax credit shall be carried forward for deduction after the 10th taxable year succeeding the taxable year in which such credit initially was claimed and no carry forward shall be allowed for deduction in any succeeding taxable year unless the taxpayer continued to be qualified and was recertified for such succeeding taxable year pursuant to K.S.A. 74-50,131, and amendments thereto.

(f) For tax years commencing after December 31, 2005, any taxpayer claiming credits pursuant to this section, as a condition for claiming and qualifying for such credits, shall provide information pursuant to K.S.A. 2009 Supp. 79-32,243, and amendments thereto, as part of the tax return in which such credits are claimed. Such credits shall not be denied solely on the basis of the contents of the information provided by the taxpayer pursuant to K.S.A. 2009 Supp. 79-32,243, and amendments thereto.

(g) This section and K.S.A. 79-32,160b, and amendments thereto, shall be part of and supplemental to the job expansion and investment credit act of 1976 and acts amendatory thereof and supplemental thereto.

New Sec. 11. (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 file the form electronically with the secretary of revenue or submit the form in the manner prescribed by 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; and

(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 11, 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.

New Sec. 12. The legislative post auditor shall conduct an audit of the promoting employment across Kansas act under this section in accordance with the provisions of the legislative post audit act. The audit shall focus on the effectiveness of the act in fostering economic growth, creating new jobs and promoting the location of business facilities, other operations and jobs in Kansas. Such audit shall be submitted to the legislature at the beginning of the regular session of the legislature held during 2015. The audit shall make a recommendation on the retention or adjustment of the limitation described in subsection (g) of K.S.A. 2009 Supp. 74-50,213, and amendments thereto.

New Sec. 13. No person who was a member of the legislature on the effective date of this act may avail themselves of the benefits under the provisions of K.S.A. 2009 Supp. 74-50,210 through 74-50,216, and amendments thereto, until after July 1, 2015.

Sec. 14. K.S.A. 2009 Supp. 74-50,103, 74-50,108, 74-50,210, 74-50,211, 74-50,212, 74-50,213, 74-50,214, 74-8010, 79-32,153 and 79-32,160a are hereby repealed.

Sec. 15. 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.