

MINUTES OF THE SENATE COMMERCE COMMITTEE

The meeting was called to order by Chairperson Karin Brownlee at 8:30 a.m. on February 19, 2004 in Room 123-S of the Capitol.

All members were present.

Committee staff present:

Kathie Sparks, Legislative Research  
Susan Kannarr, Legislative Research  
Helen Pedigo, Revisor of Statutes  
Nikki Kraus, Committee Secretary

Conferees appearing before the committee:

Joan Wagon, Secretary, Department of Revenue  
John Watson, Department of Commerce  
Kent Heermann, Regional Development Association of East Central KS  
Christy Caldwell, Greater Topeka Chamber of Commerce  
Kim Gulley, League of Kansas Municipalities

Others attending:

See Attached List.

Chairperson Brownlee told the committee that today they would aim to work **SB 481**--Employment security law; state unemployment tax, exempting private prison based industries from paying.

Chairperson Brownlee opened the public hearing on:

**SB 504--Tax benefits for Kansas businesses**

Ms. Sparks provided the committee with an explanation of the bill. (Attachment 1)

The committee was provided with an e-mail from Wayne Maichel concerning KDOC's private prison industry employers. (Attachment 2)

The Department of Human Resources provided the committee with a sheet entitled, "Response to Questions Raised by Senator Brownlee S.B. 481: Exempting Private Prison Based Industries Employment." (Attachment 3)

Senator Kerr moved **SB 481** favorable for passage. Senator Jordan seconded. The motion passed.

Senator Barone was a recorded No vote on this motion.

Orville Weber, Department of Human Resources, presented the committee with information on **SB 482** regarding freezing rates. (Attachment 4) The committee delayed discussion of the issue.

The committee discussed **SB 483**--Employment security laws; disqualification from receipt of benefits.

Senator Jordan stated that the change on p. 6 was fairly major. Senator Buntin asked about treatment from the provider. Chair Brownlee stated that the information provided to the employer is also provided to the judge. Senator Emler stated that he did not feel uncomfortable with the language on page 6 but that he had reservations about the wording on page one regarding the need to protect the company from having to keep the position open.

The committee was presented with a proposed amendment to the bill from Employer's Unity. (Attachment 5)

The committee again addressed **SB 504**.

## CONTINUATION SHEET

MINUTES OF THE SENATE COMMERCE COMMITTEE at 8:30 a.m. on February 19, 2004 in Room 123-S of the Capitol.

Secretary Wagnon stated that her department was in complete support of this program. She stated that the Department of Commerce spends time trying to bring in business for the state by enticing them with tax credits. She stated that this bill would move that to being an award, not an entitlement. She stated that sometimes businesses don't need tax credits, but cash instead. She stated that this would be monitored and tracked and that there would be a fifty million dollar cap that would keep the commitments, entitlements, and obligations of the state. She stated that there needed to be a record of what the state has gotten and what has been produced. Chairperson Brownlee stated that she agreed about the need for tracking.

Richard Cram from the Department of Revenue stated that this new tracking would replace that of Kansas, Inc. Secretary Wagnon went on to explain that this was because Kansas, Inc. does not have access to the confidential tax information that the Department of Revenue does.

Senator Wagle asked what percentage of income taxes are being given back in tax credits. Secretary Wagnon replied that annually, there are about \$100 million in corporate income taxes collected. She stated that the \$50 million cap represents the amount currently being given away in tax credits annually.

Senator Barone asked if the tracking done by the Department of Revenue would include detail about each program and commitment out there and asked if existing Kansas businesses would be entitled to any credits. Wagnon stated that yes, existing businesses would be eligible, and that through the tracking, both the Department of Commerce and Department of Revenue would be able to work together more effectively. In response to another question from Senator Barone, Wagnon stated that not only would this lure businesses in, but it would cause businesses to expand, both of which helped work toward the ultimate goal of growth.

Following further committee discussion, Mr. Watson provided written testimony in support of **SB 504**. (Attachment 6)

The committee was provided with copies of information on the Kansas Business Benefits Program (KBBP). (Attachment 7)

Mr. Heermann testified in favor of the bill, but provided some criticisms of certain elements of the bill. (Attachment 8) While he complimented the minimum wage threshold's impact on economic development, he stated that the Kansas Business benefits program needs representation from the private sector such as a CPA, a CFO, and/or a tax attorney. He stated that he was concerned with charging a fee to cover the cost of determining the availability of job creation and investment credits and the costs of an audit. He said the option to charge fees should be eliminated. He also criticized the net investment definitions for lacking common sense, and stated that original cost definition makes business sense and should be the original cost less the Federal IRS depreciation schedule according to the number of years in service because this policy just sends the wrong message to an expanding of new business. He concluded by stating that he didn't want to sound negative about the legislation, but it was a comprehensive revision to several existing tax credit programs and there has not been enough time to review and learn all of the details of the bill.

Ms. Caldwell testified in opposition to the bill, requesting additional time for the business community to review the language of the bill, whose goals it may support. (Attachment 9)

Chairperson Brownlee closed the public hearing on **SB 504**.

Chairperson Brownlee adjourned the meeting at 9:30 a.m. The next meeting will be at 8:00 a.m. on February 19, 2004 in Room 123-S of the Capitol.



February 18, 2004

**To:** Senate Committee on Commerce

**From:** Kathie Sparks, Principal Analyst

**Re:** SB 504

The stated purpose of the bill is to create a simple, flexible and progressive system of tax benefits to equitably promote the development of Kansas business.

- The Kansas Business Benefits Program Advisory Council is created (Sec.5)
  - The Council would consist of seven voting members: Secretary of Commerce (Serve as Chairperson); Secretary of Revenue; Chairpersons of Senate Commerce and House Economic Development; Ranking Minority members of Senate Commerce and House Economic Development; and the Director of the Budget.
  - Responsibilities of the Council:
    - Establish selection criteria to determine the tax credits earned by a taxpayer;
    - Annual review and approval of selection criteria
    - Set the processing fee that the Secretary of Commerce and the regional Economic development organizations designated by the Advisory Council, are authorized to assess for each economic development project proposed by a business
    - Establish guidelines to determine whether an a proposal will be evaluated & processed by the regional entity or by the Department of Commerce
    - In 2007, the Council shall commission an analysis of the program.
- Qualifications for accessing the tax credits
  - A taxpayer is required to pay wages to its qualifying worksite in excess of 80% of the statewide average of private sector wage, if the average for the county in which the worksite is located is above the statewide average, or in excess of 80% of the county average private sector wage if the average is less than the statewide average private sector wage; however, not ever less than federal minimum wage.

*Senate Commerce  
02/19/04  
Attach #1*

- When accounting for the number of net new employees to a worksite, an employee that is moved from one location in Kansas to another is never counted.
- A worksite employed by the taxpayer in the operation of a revenue producing enterprise; except for a swine production facility or the only activity with respect to the worksite is to lease it to another person or persons; and may include a worksite at which the sole activities at the site are administrative management or operations that support the primary focus of the business or both.
- Tax Credits
  - A 50 percent of the vested tax credit or \$50,000, whichever is less, can be issued. A vested tax credit means a credit against the tax imposed.
  - The credits can be transferred in the year earned, or in the year after that, but no less than \$50,000 at a time. The party receiving transferred credits must use them within a 3 year carryforward period. The 3 year carryforward period begins with the year in which the credits were issued.
  - The Department of Revenue is required to maintain a tracking system of the current ownership of all investment tax credits
  - The Secretary of Commerce is required to set aside a portion of each year's tax credits to be allocated to regions of the state and any unencumbered credits are to be returned to Commerce
  - A \$50.0 million annual cap is established on tax credits for tax year 2004 and therefore the cap is subject to annual appropriation.
- Abolishes the Kansas Enterprise Loan Act and the \$100/\$100 Program found in the Job Expansion and Investment Tax Credit Act of 1976.

KS/dg

**Wayne Maichel**

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**From:** Paul B. Bicknell  
**Sent:** Tuesday, February 17, 2004 10:36 AM  
**To:** Wayne Maichel  
**Cc:** Glenn Griffeth  
**Subject:** FW: KDOC Private Prison Industry Employers

Wayne Maichel

Here is the list - more than I thought, there are 15 companies.

Paul -  
-----Original Message-----  
From: Tom Vohs [mailto:TomV@kdoc.dc.state.ks.us]  
Sent: Tuesday, February 17, 2004 10:31 AM  
To: 'pbicknell@hr.state.ks.us'  
Subject: KDOC Private Prison Industry Employers

The information you requested concerning KDOC's private prison industry employers is as follows: 1) Tescott Woodcrafters 2) Century Manufacturing 3) Hubco 4) Unruh Fab 5) BAC 6) Compuchair 7) CSE 8) Heatron 9) Henke Manufacturing 10) Impact Design 11) Jensen Engineering 12) Prima Profiles 13) RFM 14) United Rotary Brush 15) VW Services 16) Zephyr Products 17) Allied Materials&Equipment 18) Koch & Co. 19) Vaughncraft Percussion 20) Aramark.

Senators Committee  
02/19/04  
Attach #2

Dept. of Human Resources  
Wayne Maichel

**Response to Questions Raised by Senator Brownlee  
S.B. 481  
Exempting Private Prison Based Industries Employment**

<u>Employer &amp; 2004 Rate</u>	<u>#Employees 4/2003</u>	<u>2003 Taxable Payroll</u>	<u>2004 Ben Charges</u>
1) 5.40%	18	\$ 104,856	\$ 9,114
2) 5.40	145	1,257,972	178,302
3) 1.68	75	560,939	15,170
4) 3.00	24	206,990	-0-
5) 3.14	5	50,964	-0-
6) 2.04	44	418,998	6,030
7) 4.92	165	1,541,569	53,455
8) 4.44	64	530,419	9,281
9) 3.84	250	2,073,828	15,880
10) 7.40	14	145,418	27,223
11) 2.40	43	379,201	543
12) 3.12	25	197,049	-0-
13) 2.04	43	399,887	2,152
14) 5.40	3	19,660	-0-
15) 3.96	194	1,518,545	7,447

Senate Commerce  
02/19/04  
Attach #03



Responses to Questions Raised By Senator Brownlee

Orville Weber

Table 1  
Tax Schedule Yield and Tax Rates By Employer Rate Group  
RY 1994 and 2004

	<u>RY 1994</u>	<u>RY 2004</u>
Percent of Total Wages The Tax Schedule Is Structured To Yield	0.9	0.4
<u>Ineligible (New) Employers By Industry</u>		
Mining .....	3.98	3.40
Construction .....	5.09	4.84
Manufacturing .....	3.64	3.14
Real Estate, Rental Leasing .....	na	3.13
Professional, Scientific, Technical Services .....	na	3.09
Administration, Waste Mgmt, Remediation .....	na	3.40
Public Administration.....	na	3.16
All Other Industries .....	3.43	2.97
Negative Balance Employers .....	5.40	5.40
<u>Positive Balance Employers</u>		
Rate Group 1 .....	0.05	0.08
Rate Group 2 .....	0.08	0.12
Rate Group 3 .....	0.15	0.24
Rate Group 4 .....	0.23	0.36
Rate Group 5 .....	0.31	0.48
Rate Group 6 .....	0.39	0.60
Rate Group 7 .....	0.46	0.72
Rate Group 8 .....	0.54	0.84
Rate Group 9 .....	0.62	0.96
Rate Group 10 .....	0.69	1.08
Rate Group 11 .....	0.77	1.20
Rate Group 12 .....	0.85	1.32
Rate Group 13 .....	0.93	1.44
Rate Group 14 .....	1.00	1.56
Rate Group 15 .....	1.08	1.68
Rate Group 16 .....	1.16	1.80
Rate Group 17 .....	1.24	1.92
Rate Group 18 .....	1.31	2.04
Rate Group 19 .....	1.39	2.16
Rate Group 20 .....	1.47	2.28
Rate Group 21 .....	1.54	2.40
Rate Group 22 .....	1.62	2.52
Rate Group 23 .....	1.70	2.64
Rate Group 24 .....	1.78	2.76
Rate Group 25 .....	1.85	2.88
Rate Group 26 .....	1.93	3.00
Rate Group 27 .....	2.01	3.12
Rate Group 28 .....	2.08	3.24
Rate Group 29 .....	2.16	3.36
Rate Group 30 .....	2.24	3.48
Rate Group 31 .....	2.32	3.60
Rate Group 32 .....	2.39	3.72
Rate Group 33 .....	2.47	3.84
Rate Group 34 .....	2.55	3.96

Senate Commerce  
02/19/04  
Attach # 4



Rate Group 35 .....	2.62	4.08
Rate Group 36 .....	2.70	4.20
Rate Group 37 .....	2.78	4.32
Rate Group 38 .....	2.86	4.44
Rate Group 39 .....	2.93	4.56
Rate Group 40 .....	3.01	4.68
Rate Group 41 .....	3.09	4.80
Rate Group 42 .....	3.17	4.92
Rate Group 43 .....	3.24	5.04
Rate Group 44 .....	3.32	5.16
Rate Group 45 .....	3.40	5.28
Rate Group 46 .....	3.47	<b>5.40</b>
Rate Group 47 .....	3.55	<b>5.40</b>
Rate Group 48 .....	3.63	<b>5.40</b>
Rate Group 49 .....	3.71	<b>5.40</b>
Rate Group 50 .....	3.78	<b>5.40</b>
Rate Group 51 .....	3.86	<b>5.40</b>

na Not applicable

**Boldface** and yellow highlights maximum tax rates allowed by law.

Table 2  
Amount of Planned Yield at Various Levels of Collection in Schedule III  
RY 2004

<u>Percent of Total Wages To Be Collected</u>	<u>Planned Yield</u>
0.3	\$251,200,000
0.4	\$282,400,000
0.5	\$314,400,000
0.6	\$345,600,000
0.7	\$376,800,000
0.8	\$408,000,000
0.9	\$440,000,000

**Maximum and Minimum Weekly Benefit Amount (WBA) Computation**

Maximum and minimum weekly benefit amounts are calculated each fiscal year and are based upon the statewide calendar year average weekly wage. The maximum weekly benefit amount is 60% of the average weekly wage for the state. The minimum weekly benefit amount is 25% of the maximum weekly benefit amount.

The maximum WBA for FY 2004 is \$351 and the minimum is \$87. If a claimant's determined WBA exceeds the maximum the WBA will be lowered to the maximum allowed by law. If a claimant's determined WBA is lower than the minimum the WBA will be increased to the minimum allowed by law.

If the maximum and minimum WBA were frozen as SB 482 proposes, those amounts would remain at the levels calculated for FY 2004 therefore there could be no increase or decrease in the maximum and minimum WBA. Were SB 482 enacted into law, an individual claimant's weekly benefit amount may be more or less than in a previous benefit year due to a change in wages but the WBA must still meet the criteria of being no more than \$351 and no less than \$87 per week.

SENATE BILL No. 483

By Committee on Commerce

2-9

Proposed Amendment  
Requested by Employers Unity  
February 18, 2004

Sen Commerce  
02/19/04  
Attach # 5

9 AN ACT concerning the employment security laws; relating to disqual-  
10 ification from receipt of benefits; amending K.S.A. 2003 Supp. 44-706  
11 and repealing the existing section.  
12

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

14 Section 1. K.S.A. 2003 Supp. 44-706 is hereby amended to read as  
15 follows: 44-706. An individual shall be disqualified for benefits:

16 (a) If the individual left work voluntarily without good cause attrib-  
17utable to the work or the employer, subject to the other provisions of this  
18 subsection (a). Continued absence after exhaustion of FMLA benefits shall  
19 be considered a voluntary resignation. After a temporary job assignment,  
20 failure of an individual to affirmatively request an additional assignment  
21 on the next succeeding workday, if required by the employment agree-  
22ment, after completion of a given work assignment, shall constitute leav-  
23ing work voluntarily. The disqualification shall begin the day following  
24 the separation and shall continue until after the individual has become  
25 reemployed and has had earnings from insured work of at least three  
26 times the individual's weekly benefit amount. An individual shall not be  
27 disqualified under this subsection (a) if:

Failure to return to work after expiration of approved  
personal and/or medical leave

28 (1) The individual was forced to leave work because of illness or injury  
29 upon the advice of a licensed and practicing health care provider and,  
30 upon learning of the necessity for absence, immediately notified the em-  
31 ployer thereof, or the employer consented to the absence, and after re-  
32covery from the illness or injury, when recovery was certified by a prac-  
33ticing health care provider, the individual returned to the employer and  
34 offered to perform services and the individual's regular work or compa-  
35rable and suitable work was not available; as used in this paragraph (1)  
36 "health care provider" means any person licensed by the proper licensing  
37 authority of any state to engage in the practice of medicine and surgery,  
38 osteopathy, chiropractic, dentistry, optometry, podiatry or psychology;

39 (2) the individual left temporary work to return to the regular  
40 employer;

41 (3) the individual left work to enlist in the armed forces of the United  
42 States, but was rejected or delayed from entry;

43 (4) the individual left work because of the voluntary or involuntary

Senate  
02/11/04  
Attach # 5  
voice

1 (d) If the individual has been discharged for misconduct connected  
 2 with the individual's work. The disqualification shall begin the day follow-  
 3 ing the separation and shall continue until after the individual becomes  
 4 reemployed and has had earnings from insured work of at least three  
 5 times the individual's determined weekly benefit amount, except that if  
 6 an individual is discharged for gross misconduct connected with the in-  
 7 dividual's work, such individual shall be disqualified for benefits until such  
 8 individual again becomes employed and has had earnings from insured  
 9 work of at least eight times such individual's determined weekly benefit  
 10 amount. In addition, all wage credits attributable to the employment from  
 11 which the individual was discharged for gross misconduct connected with  
 12 the individual's work shall be canceled. No such cancellation of wage  
 13 credits shall affect prior payments made as a result of a prior separation.

14 (1) For the purposes of this subsection (d), "misconduct" is defined  
 15 as a violation of a duty or obligation reasonably owed the employer as a  
 16 condition of employment. The term "gross misconduct" as used in this  
 17 subsection (d) shall be construed to mean conduct evincing extreme, will-  
 18 ful or wanton misconduct as defined by this subsection (d).

19 (2) For the purposes of this subsection (d), the use of or impairment  
 20 caused by an alcoholic beverage, a cereal malt beverage or a nonprescri-  
 21 bed controlled substance by an individual while working shall be conclu-  
 22 sive evidence of misconduct and the possession of an alcoholic beverage,  
 23 a cereal malt beverage or a nonprescribed controlled substance by an  
 24 individual while working shall be prima facie evidence of conduct which  
 25 is a violation of a duty or obligation reasonably owed to the employer as  
 26 a condition of employment. For purposes of this subsection (d), the dis-  
 27 qualification of an individual from employment which disqualification is  
 28 required by the provisions of the drug free workplace act, 41 U.S.C. 701  
 29 et seq. or is otherwise required by law because the individual refused to  
 30 submit to or failed a chemical test which was required by law, shall be  
 31 conclusive evidence of misconduct. Refusal to submit to a chemical test  
 32 administered pursuant to an employee assistance program or other drug  
 33 or alcohol treatment program in which the individual was participating  
 34 voluntarily or as a condition of further employment shall also be conclu-  
 35 sive evidence of misconduct. Alcoholic liquor shall be defined as provided  
 36 in K.S.A. 41-102 and amendments thereto. Cereal malt beverage shall be  
 37 defined as provided in K.S.A. 41-2701 and amendments thereto. Con-  
 38 trolled substance shall be defined as provided in K.S.A. 65-4101 and  
 39 amendments thereto of the uniform controlled substances act. As used  
 40 in this subsection (d)(2), "required by law" means required by a federal  
 41 or state law, a federal or state rule or regulation having the force and  
 42 effect of law, a county resolution or municipal ordinance, or a policy  
 43 relating to public safety adopted in open meeting by the governing body

Failure of the employee to notify the employer of an absence or tardy prior to the commencement of their work shift shall be considered prima facie evidence of a violation of a duty or obligation reasonably owed the employer as a condition of employment.

22

5-5

1 except that no such confirmation is required for a blood alcohol sample;  
2 and

3 (F) the foundation evidence must establish, beyond a reasonable  
4 doubt, that the test results were from the sample taken from the  
5 individual.

6 (3) For the purposes of this subsection (d), misconduct shall include,  
7 but not be limited to repeated absence, including incarceration, resulting  
8 in absence from work of one week or longer, and lateness, from scheduled  
9 work if the facts show:

10 (A) The individual was absent without good cause;

11 (B) the absence was in violation of the employer's written absentee-  
12 ism policy;

13 (C) the employer gave or sent written notice to the individual, at the  
14 individual's last known address, that future absence may or will result in  
15 discharge;

16 (D) the employee had knowledge of the employer's written absen-  
17 teeism policy; ~~and~~

18 (E) if an employee disputes being absent without good cause, the  
19 employee shall present evidence that a majority of the employee's ab-  
20 sences were for good cause. Such evidence shall include documentation  
21 from the treatment provider regarding repeated absences and tardiness  
22 due to illness or treatment, or in the event of a no call no show situation,  
23 documentation regarding the medical inability of the employee to notify  
24 the employer of such absence.

If the employee alleges the tardiness or absence was the result of health related issues, such evidence shall include documentation from a licensed and practicing health care professional as defined in subsection (a)(1). Incarceration shall not be considered good cause for absence or tardiness.

25 (4) An individual shall not be disqualified under this subsection (d)  
26 if the individual is discharged under the following circumstances:

27 (A) The employer discharged the individual after learning the indi-  
28 vidual was seeking other work or when the individual gave notice of future  
29 intent to quit;

30 (B) the individual was making a good-faith effort to do the assigned  
31 work but was discharged due to: (i) Inefficiency, (ii) unsatisfactory per-  
32 formance due to inability, incapacity or lack of training or experience, (iii)  
33 isolated instances of ordinary negligence or inadvertence, (iv) good-faith  
34 errors in judgment or discretion, or (v) unsatisfactory work or conduct  
35 due to circumstances beyond the individual's control; or

36 (C) the individual's refusal to perform work in excess of the contract  
37 of hire.

38 (e) If the individual has failed, without good cause, to either apply  
39 for suitable work when so directed by the employment office of the sec-  
40 retary of human resources, or to accept suitable work when offered to  
41 the individual by the employment office, the secretary of human re-  
42 sources, or an employer, such disqualification shall begin with the week  
43 in which such failure occurred and shall continue until the individual

3

**Testimony on Senate Bill 504**  
**to**  
**The Senate Committee on Commerce**

**by John Watson**  
**Director of Trade Development**  
**Kansas Department of Commerce**

**February 19, 2004**

Good morning Madame Chair and members of the Senate Commerce Committee. I am representing the Kansas Department of Commerce and testifying in support of Senate Bill 504. This legislation introduces the Kansas Business Benefits Program.

Senate Bill 504 is an incentive package and resource tool which strengthens the Department of Commerce's business retention and business recruitment package offered to growing and expanding industry in Kansas. It is a new approach that offers a flexible, tailored incentive package of tax credits to Kansas companies. By way of contrast, our existing incentive package includes a multitude of programs such as Enterprise Zone (EZ) credits, sales tax exemptions for construction, remodeling and equipment purchases, High Performance Incentive Program (HPIP) credits, and job/investment credits for retail business who do not qualify for EZ or HPIP tax credits. With enactment of the legislation, these programs would be repealed and replaced with the Kansas Business Benefits Program.

This legislation will also give companies who receive tax credits the opportunity to maximize the economic advantage of the incentive by selling the credits when they have no current tax liability.

Under the provisions of this bill, criteria will be established for eligibility. An oversight board will review the effectiveness of criteria on a quarterly basis. We believe that these changes in the package of incentives will allow the state to become more effective at both job retention and new capital formation.

With passage of Senate Bill 504, Commerce would be able to offer incentives to companies based on all economic factors that positively impact the chosen locale. We need more flexibility to be able to more fairly reflect the economic significance that an investment has on a particular community or region. It is a more comprehensive evaluation of who is entitled to credits, looking not only at job creation, but also payroll, training, job retention, net new job creation, and prevailing economic conditions in the county. This is good public policy. It is fair to companies and gives the state a more tailored way to distribute the state's resources to empower Kansas companies to grow.

Senate Commerce  
02/19/04  
Attach #6



The beauty of this legislation is in the refinement of the application of the tax credits to the context of the investment. For example, under the current provisions of the state's tax credit programs an investor such as Serologicals in Lawrence could bring 40 jobs at a payroll of \$47,000 per job to town and be treated the same as another company in the same general industry category with 40 new jobs at \$8 an hour. The current tax credit regulations keep us from providing different rewards for qualifying jobs with vastly different pay scales.

The provisions of this bill also allow for the sale of tax credits. There is little benefit to an investing Kansas company, especially start-up companies, if their current tax status does not allow them the full usage of the incentive. By selling the credits, the company can take the full measure of the incentive they are entitled to receive for making the investment commitment. This is an innovative approach to giving real value of the tax credits to investors.

To provide strong oversight for this proposed incentive program, a Kansas Business Benefits Program Advisory Council will be established to define criteria, to monitor effectiveness, and to identify and designate regional organizations to process smaller scale economic development projects. The Council would include the Cabinet Secretaries of Commerce and Revenue, the chairperson and ranking minority member of the Kansas Senate Commerce committee, the chairperson and ranking minority member of the Kansas House Economic Development Committee, and the Director of the Budget.

The Advisory Council will perform an analysis of the incentive program including a thorough review of the criteria used to evaluate project proposals. The Council may determine various appropriate criteria such as: job creation, job retention, geographic location, local economic distress, unemployment rates, and new or retained investment. In addition, the Council will work with the regions to allocate a portion of the overall tax credits to serve smaller scale projects originating in each region.

The proposed legislation sets a \$50 million annual credit cap. Review of this legislation with Secretary of Revenue Joan Wagnon indicates the fiscal impact will be revenue neutral. All approved credits are encumbered against the credit cap. Tax credit applicants must meet a minimum payroll requirement. Credits may be carried forward for three years, and credits are transferable.

This legislation would unify as well as strengthen the delivery of business incentives to the Kansas business community and to new companies in the state. By modifying the existing incentive programs to provide a single incentive program and by broadening the criteria used to evaluate worthy economic development projects, this incentive package will create flexibility, fairness and real value to executives seeking the state's support for their job creation decisions.

Thank you for an opportunity to testify in support of this important piece of business legislation.

The overall intent is to award tax credits in a manner that maximizes the impact to the state's economy and to move away from the current cookie-cutter approach. Under this proposal, a different award could be provided for a \$6/hr job created in Lenexa (county average wage \$18.56) than for a \$25/hr job created in Junction City (county average wage \$9.76), or in Larned (county average \$10.09), or in Labette (county average \$10.29).

**Overview of program mechanics:**

- An oversight body, the KBBP Advisory Council, would establish criteria on which credits may be earned.
- The Council would be composed of top Senate, House, Commerce, Revenue, and Budget Office representatives.
- Using the Council's criteria, a company's economic development project proposal is evaluated by Commerce to determine the maximum potential credits the project can earn.
- Potential credits are encumbered against each annual cap in accordance with the project timeframe. Credits are then awarded and claimed each year based on actual accomplishment of salary levels, job creation, investment, and so on. A portion of each year's credit cap will be allotted to each state region to use in processing smaller economic development projects.

Credits claimed but not used in a tax year can be carried forward for 3 years. Awarded credits can be transferred in the year earned, or in the following year. The party receiving transferred credits must use them within the original 3-year carry-forward period.

The Advisory Council will establish a user-fee structure, so that those most directly benefiting from KBBP will also pay necessary administrative and audit costs, rather than forcing taxpayers to bear such costs.

A wage threshold must be exceeded to qualify for any KBBP benefits. This wage threshold was established at 80% of the statewide wage for higher-wage counties, and 80% of the county wage for lower wage counties, but in no case less than the federal minimum wage. This wage-driven program forces businesses to first consider the compensation of their employees before the company obtains access to credits that can be used to offset 100% of the company's Kansas tax liability.

While a company will not know ahead of time exactly how many credits will be earned for a new job, they will know what criteria are used to maximize the potential credit. For instance, creating an above-average-wage job in a county with high unemployment and/or an out-migration problem could be worth more credits than a low-wage job in a fast-growth county with low unemployment. It is possible that KBBP Advisory Council would approve a floor and ceiling on credits awarded (see below).

Note: There is an absolute \$50 million annual credit cap, for both newly awarded and carry-forward credits. This cap assumes that KBBP is revenue-neutral in this year of cash-flow problems for the state. It is based upon the history of tax credit grants over time. If the assumption is valid that, by better targeting credits, the state will obtain a benefit worth as much or more than the credits that are awarded, then it is in the state's interest to remove the cap as soon as budgetary cash-flow requirements will permit.

Senate Commerce  
02/19/04  
Attach #07





**Regional of East Central Kansas  
Development Association**

719 Com il  
P.O. Box 103  
Emporia, Kansas 66801

620-342-1600  
Fax: 620-342-3223

February 19, 2004

Kent Heermann

Good morning Senator Brownlee and members of the Senate Commerce committee.

My name is Kent Heermann, President of the Regional Development Association of East Central Kansas (RDA), which is the lead economic development organization of Lyon County and the City of Emporia.

I have been active in economic development for over 25 years and a certified economic developer (CEcD) by the International Economic Development Council (IEDC) for over eleven years. This coming Saturday will mark my ten year anniversary at the RDA. The professional economic development organizations which I belong to are IEDC, Southern Economic Development Council (SEDC) and the Kansas Economic Development Alliance (KEDA).

The RDA actively participates with the Kansas Department of Commerce on marketing activities. KDOC and the RDA have successfully partnered together on business expansion, retention and recruitment.

This past year, Dale Davis of Emporia, who chaired the North Central Kansas Prosperity Summit, asked if myself and others would assist in the planning, coordination and implementation of the regional prosperity summit in Emporia. The North Central Prosperity Summit results were summarized and forwarded to Lt. Governor Moore. Those results were reported and recommendations made by Governor Sebelius and Lt. Governor John Moore on October 1, 2003 at the State Wide Prosperity Summit in Wichita. We continue to work on the North Central regional marketing plan. In fact, this past week we met in Manhattan to discuss the next phases of the North Central Prosperity marketing plan.

A week ago today, the Kansas Economic Development Alliance met for their annual legislature update. During that update, Deputy Secretary Steve Kelly gave us an update on the State Revitalization Plan, which includes the legislative action items of the Kansas Benefits Program SB 504, SB 417, SB 393, SB 48, HB 2647, HB 31 and SB 394. Senator Brownlee we appreciate your attendance at the meeting. Senator Jordan gave us a broad brush over view of the Biotechnology bill. And Representative Wilk gave an overview of the Center for Entrepreneurship. We appreciate their participation at the briefing.

KEDA President Jim Martin reported to the group the KEDA Legislative Priorities for 2004. With regard to the Prosperity Summit, the KEDA statement is as follows,

“KEDA supports the Governor’s and the Lt. Governor’s Prosperity Summit initiatives and looks forward to working with the administration as these issues develop.”

The KEDA executive committee at their December meeting approved these legislative priorities.

According to the fact sheet distributed by KDOC at the KEDA legislative briefing, the description of the Kansas Business Benefits Program was as follows,

“...would replace the existing High Performance Incentive Program and Enterprise Zone Program tax credits. Within the new program, tax credits could be sold to provide a source of business capital and incentives applied accordingly to available scale adjusted to reflect regional economic realities.”

The High Performance Incentive Program (HPIP) sorely needs to be revised. It was one of those programs where many businesses chose not to utilize, because as a CFO from a company with a presence in Emporia shared with me, “...*the juice just isn't worth the squeeze*”.

As I have tried to understand and interpret, SB 504 in the past seven days the bill has been available to the public. I have attempted to understand the full impact of the proposed legislation.

Establishing a minimum threshold on average wage is good policy. In economic development theory and reality, it is a poor policy to grant incentives to jobs that are created which are significantly below the county average wage. The reason being it does not contribute to increasing the wealth in the region.

In Emporia we have a threshold of \$20,800 per year average salary plus other qualifications for the ad valorem property tax abatement and an average annual salary of \$23,920 plus other requirements for our STI Performance Based cash grant fund. We welcome all business expansions and job creation, but some projects just don't merit any performance-based incentives.

The flexibility granted to the Kansas Business benefits program advisory council has the potential to provide a progressive, responsive and flexible performance based tax credit program. This council could make Kansas extremely competitive. The distinguished membership consisting of state administrative officials and the legislative branch. I believe the committee needs representation from the private sector, such as a CPA with private sector experience, a CFO from the private sector and/or a tax attorney. Successful economic development is a partnership with equal representation from both the public and private sector. And the state economic efforts would be better served if the private sector point of view were represented.

The ability for a business to sell the tax credits to generate cash upfront to help mitigate those startup costs is desirable for business. This legislation has been proposed many times over the last several years. And would be an extremely competitive tool for Kansas.

The items that concerned me are charging a fee to cover the cost of determining the availability of job creation and investment credits and the costs of an audit is not good policy. I know of no State's economic development departments in our region that charge a fee to make an incentive proposal determination. The Kansas Department of Commerce has never charged a fee for an incentive determination.

If a state fee would be assessed for a tax credit proposal for a new company considering the State, many communities would be forced to use their scarce financial resources to pay the fee to get a proposal from the Department of Commerce. And there is no refund if the business decides to locate in another state. The option to charge fees should be eliminated. The fees to process an application to determine tax credits and for audit purposes is counterproductive to recruitment and expansion efforts. It is a cost of doing business that local, regional and state economic marketing efforts have funded for years.

The net investment definitions lack common sense. The deduction of the first \$50,000 is a carryover from the HPIP program, but was not part of Enterprise Zone tax credits. I never really understood the logic behind the deduction of the first \$50,000 from the HPIP.

In Emporia, the RDA, City and County have debated the issue should businesses be rewarded with incentives for the normal replacement of business equipment. The City and County policies for a new company to be eligible for performance-based incentives is that the capital investment, which includes real and personal property must be at least \$1,500,000. An existing business must increase the capital investment of either by 10% of their existing real and personal property value or by no less than \$150,000. The value is determined by contacting the Lyon County Assessor, who has the most current valuation statement for the real and personal property for the business. If the business meets or exceeds the threshold then they receive credit for the entire capital investment amount. So it is an all or nothing policy, not a deduction.

Original cost definition just does not make business sense. To me it sounds like an attorney's definition not an accountant. The definition should be the original cost less the Federal IRS depreciation schedule according to the number of years in service. This policy just sends the wrong message to an expanding or new business.

I am not an attorney and certainly I know my limitations and when to contact the experts to help interpret proposed legislation. But the way I read SB 504 an audit is required on all businesses that utilize tax credits.

Under currently State law, any business that files a Kansas Income Tax return with a schedule K-34 claiming tax credits, that tax payer is subject to a random audit. So I question why is there a need for a 100% audit on taxpayers, who claim tax credits? Has there been rampant fraud on tax credits in the past?

In conclusion, I don't want to sound negative on SB 504. But it is a comprehensive revision to several existing tax credit programs. There just hasn't been enough time to review and learn all the details of SB 504. This bill has the potential to be leading edge economic development legislation; I just don't want this to be bleeding edge legislation.

Thank you for time this morning. I welcome any questions. Please feel free to contact me at your convenience.

Respectfully Submitted,

Kent Heermann, CEcD  
President  
Regional Development Association of East Central Kansas  
710 Commercial Street, P.O. Box 703  
Emporia, Kansas 66801  
T 620-342-1600 x16  
F 620-342-3223  
Email [kheermann@emporiakschamber.org](mailto:kheermann@emporiakschamber.org)



120 SE 6th Avenue, Suite 110  
Topeka, Kansas 66603-3515

P:785.234.2644 F:785.234.8656  
www.topekachamber.org  
topekainfo@topekachamber.org

Testimony before the Senate Commerce Committee  
February 19, 2004  
SB 504  
By Christy Caldwell, Vice President Government Relations  
Greater Topeka Chamber of Commerce  
Phone: 785-234-2644  
Email: [ccaldwell@topekachamber.org](mailto:ccaldwell@topekachamber.org)

The Greater Topeka Chamber of Commerce appreciates the efforts of the Department of Commerce and Department of Revenue to simplify the delivery of tax credits to businesses expanding in Kansas or moving to our state. It is evident that they have spent a great deal of time in developing a new system for the delivery of these incentives.

Unfortunately this bill has just been made available to your committee and the business community this last week with "turnaround" next week. Some practitioners in the field of economic development have reviewed the bill; there have been many questions as to how the delivery of these tax credits will work under this new system. Reading and rereading the bill brings up nuances that beg for discussion with the two departments as to how they envision the everyday use of this new concept.

We would like to suggest that time be taken to allow the economic development community across the state to review the language and sit with the two Departments' representatives to better understand this new method of delivering tax credits. There may need to be some additional clarifying language, some changes made, and some practical practices included. We believe that the more completely these questions and issues are addressed prior to implementation of such a significant change, the more successful a new program will be.

We will be happy to provide our assistance at any meetings with the departments or in discussions with members of the legislature during an interim study. We appreciate your allowing us to speak on SB 504.

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Senate Commerce  
02/19/04  
Attach #9