

Approved: April 29, 2005  
Date

MINUTES OF THE SENATE COMMERCE COMMITTEE

The meeting was called to order by Chairperson Nick Jordan at 8:35 A.M. on March 18, 2005 in Room 123-S of the Capitol.

All members were present except:

Karin Brownlee- excused  
Jean Schodorf- excused  
Susan Wagle- excused

Committee staff present:

Susan Kannarr, Kansas Legislative Research Department  
Kathie Sparks, Kansas Legislative Research Department  
Helen Pedigo, Revisor of Statutes  
Jackie Lunn, Committee Secretary

Conferees appearing before the committee:

Representative Lana Gordon  
Representative Terrie Huntington  
Carol McDowell, Kansas Film Commission  
Matt Jordan, Department of Commerce  
Tracy Taylor, Kansas Technology Enterprise Corporation  
Clay Blair, Chairperson, Bioscience Authority  
Troy Findley, Legislative Liaison For Governor  
Diane Costello, Olathe Chamber of Commerce  
Brein Starner, Overland Park Economic Development Council

Others attending:

See attached list.

Chairperson Jordan opened the meeting by opening the hearing on **HB 2232**. Chairperson Jordan introduced Representative Lana Gordon to give her testimony as a proponent of **HB 2232**. Representative Gordon offered written testimony (Attachment 1) She gave a brief history of the bill. This Legislative session member of the House Economic Development Committee expressed interest in pursuing the film industry and what we might be able to do as a State to create a climate in which film making can grow. The result was several bills they passed out of their committee and **HB 2232** was one of those bills. Representative Gordon urged the Committee to pass it out favorably.

Chairperson Jordan introduced Representative Terrie Huntington to give her testimony as a proponent of **HB 2232**. Representative Huntington offered written testimony. (Attachment 2) Representative Huntington urged the Committee to support **HB 2232** and stated it is the hope of the film commission board that designated appointees will be committed to the mission and strategic plans of the Kansas Film Commission as they move forward with plans to broaden the film industry and bring full-time jobs and projects to Kansas.

Chairperson Jordan introduced Carol McDowell, Kansas Film Commission who presented the written testimony of Barbara Nash, Chairman of the Kansas Film Commission. (Attachment 3)

With no further testimony on **HB 2232**, Chairperson Jordan closed the hearing.

Chairperson Jordan opened the hearing on **HB 2448** by introducing Tracy Taylor, President and CEO of the Kansas Technology Enterprise Corporation, to give his testimony as a proponent of **HB 2448**. Mr. Taylor presented written testimony. (Attachment 4) Mr. Taylor stated the Angel Investor Tax Credit Act, which was legislation passed last session, has been so successful he is proposing changes to last year's legislation that would grant Kansas Technology Enterprise Corporation greater discretion to allocate this limited resources of the state to investors in the companies most likely to yield the greatest economic returns to the state. This change to the existing act removes the implicit understanding that these tax

credits will be allocated on a "first come, first served" basis which, given the scarcity of these tax credits relative to the apparent market demand, does not lead to an optimal result for the state.

Chairperson Jordan recognized Representative Kenny Wilk. Representative Wilk stated that the House worked very hard on these bills and wanted to thank all parties involved for working so hard and would appreciate the consideration of the Committee for passage of these bills.

Chairperson Jordan opened the hearing on Sub HB 2003 and introduced Clay Blair, Chairman of the Bioscience Authority to give his testimony as a proponent of Sub HB 2003. Mr. Blair took a few minutes to explain what the Bioscience has been doing since their inception. He discussed the board members and all the contributions which they have made and will be able to make in the future. Their focus so far has been identifying opportunities with existing companies within the state. They have also been approached from companies outside the state who have learned about the Kansas Bioscience Authority Act. He mentioned several projects within the state they have been working on. The greatest opportunities with this is working with the Universities. They have been very forthcoming and very accommodating. This bill is a clean up bill for clarification for the funding for the Bioscience Authority. Mr. Blair stated the Authority is comfortable with this legislation and are ready to move forward and urged the Committee to move on this legislation.

Chairperson Jordan called on Tracy Taylor to highlight the changes. Mr. Taylor stated that Kansas Economic Growth Act was a multi-faceted initiative intended to boost the biosciences industry in Kansas and support entrepreneurship throughout the state and encourage equity investments in startup technology businesses. The Kansas Economic Growth Act was innovative in part because of the unique funding mechanism that was employed. Without raising taxes or producing a current fiscal impact, a funding mechanism was conceived that would capture the incremental tax revenue growth from the biosciences industry in Kansas and use those incremental finances to accelerate the industry growth rate. The Kansas Technology Enterprise Corporation has been working on behalf of the Bioscience Authority at the request of the Chairman, Clay Blair. Mr. Taylor explained Sub for HB 2003. Mr. Taylor offered written testimony (Attachment 5)

Chairperson Jordan referred the Committee to the written testimony from Troy Findley, Legislative Liaison for the Governor. (Attachment 6)

A discussion followed with the Secretary of Revenue, Joan Wagnon, Senator Barone, Chairperson Jordan, Senator Wysong, and Mr. Blair regarding the cash flow situation with the Bioscience Authority.

Chairperson Jordan asked all parties involved to discuss the cash flow issue and try to find a solution which will accommodate all parties concerned. Chairperson Jordan stated the bill would be worked on Monday.

Chairperson Jordan turned the Committee's attention to a suggested amendment to be offered. Chairperson Jordan introduced Matt Jordan, Department of Commerce to give his testimony. Mr. Jordan referred the Committee to written copies; "The Retention of High Wage Jobs in Kansas" (Attachment 7); "Investments in Major Projects and Comprehensive Training (IMPACT)" (Attachment 8); and "Amendment to Sub HB 2003" dated March 18, 2005, Department of Commerce. (Attachment 9) Mr. Jordan gave a review and explanation of the amendment.

Chairperson Jordan recognized Diane Costello representing the Olathe Chamber of Commerce as a proponent of the amendment presented by the Department of Commerce. Ms. Costello stated the State of Kansas needs more tools to retain jobs in the state and the Olathe Chamber of Commerce supports this amendment Ms. Costello presented written testimony. (Attachment 10)

Chairperson Jordan introduced Brein Starner, Director of the Overland Park Economic Development Council representing the Overland Park Chamber of Commerce and the Overland Park Economic Development Council. Mr. Starner stated this amendment is very important to help retain companies and jobs through the state of Kansas. He encouraged the Committee to pass this amendment.

Chairperson Jordan referred to the written testimony in support of the amendment presented by the Department of Commerce; Marlee Carpenter representing the Kansas Chamber (Attachment 11); Blake



Schreck representing the Lenexa Chamber of Commerce (Attachment 12); Christi Caldwell representing the Greater Topeka Chamber (Attachment 13); and Patrick French representing the Greater Wichita Area Economic Development Coalition and affiliated with the Wichita Area Chamber of Commerce. (Attachment 14)

Chairperson Jordan stated these bills from today would be worked on Monday. He feels this amendment fits well on Sub HB 2003 or even HB 2448.

Chairperson Jordan stated with no further testimonies or comments on HB 2448 and Sub HB 2003 the hearings are closed.

The meeting was adjourned at 9:30 a.m. with the next meeting scheduled for Monday, March 21, 2005 at 8:30 a.m. in room 123S.





## STATE OF KANSAS

## COMMITTEE ASSIGNMENTS

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TOPEKA

HOUSE OF  
 REPRESENTATIVES

CHAIR: ECONOMIC DEVELOPMENT  
 MEMBER: EDUCATION BUDGET  
 TAXATION  
 JT. COMMITTEE: ARTS & CULTURAL RESOURCES  
 ECONOMIC DEVELOPMENT

Madam Chair and Members of Senate Commerce Committee:

I come before you today, to testify in favor of HB2232. This bill was requested by the film commission to change the structure as to composition of membership appointment.

The following is a little history of the Economic Development Committee's involvement in this. Last year the Committee heard from interested parties concerning growing the independent film industry in Kansas. Two proposals were presented. One project was a group of investors who wanted to build a major entertainment area including sound stage, theatres and all that the industry would require. The other group, called Kansas Connection, consists of young filmmakers from Kansas originally, living in California, who would like to come home and be able to do their work and live here. They both had different plans for legislation.

Our committee became very excited about the prospects. I chaired a sub-committee named "Lights Camera Action" to further discuss the possibilities. We involved Kansas Inc. in conducting a feasibility study, which was completed earlier this year. This Legislative session, members of my committee expressed interested in pursuing more about the film industry and what we might be able to do as a State to create a climate in which filmmaking can grow. After hearing further presentations from filmmakers and producers in January, as well as the results of the Kansas Inc. study, we composed several bills. The House Economic Development Committee passed out HB 2232, HB2443 and HB 2444, sending them to the floor of the House where they received 98 and 99 votes in favor. HB2444 is patterned after what other states are offering in tax incentives. HB2443 was developed as the angel investor bill for film investment. Senate Taxation has had hearings on 2443 and 2444, but is not planning to work them this year. Our committee has worked with the Department of Revenue and Commerce to improve HB 2443. We hope to continue working on film initiatives with the Departments during Interim to further explore this industry.

I believe that HB2232 provides the foundation to a broader plan to structure the film commission in a way that it encourages more membership participation of parties devoted to helping attract this kind of business to Kansas.

Other countries and states have been successful with the industry. The time is ripe for Kansas to create a bigger playing field because the dollar is currently not strong enough for instance, in Canada, to offer the price breaks as in recent times, so less filmmakers are attracted there. We certainly would reap many benefits both economically and culturally by creating opportunity for more of the film industry to grow in Kansas. I look to HB2232 to be a start in paving the road to a future for more film dollars being spent in Kansas.

Thank you for your consideration of HB2232, we would appreciate your support.

*Lana Gordon*

Senate Commerce Committee

3-18-05

Attachment 1-1-

STATE OF KANSAS

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TOPEKA

HOUSE OF  
REPRESENTATIVES

COMMITTEE ASSIGNMENTS  
VICE-CHAIR: ECONOMIC DEVELOPMENT  
MEMBER: COMMERCE & LABOR  
CORRECTIONS AND JUVENILE  
JUSTICE

Testimony to Senate Commerce Committee  
March 18, 2005  
HB 2232

Senator Jordan and members of Senate Commerce:

HB 2232 was brought to the House Economic Development Committee by the President of the Kansas Film Commission, Barbara Nash. It would amend KSA 2004 Supp 74-9201 which outlines the requirements for the appointment of voting members to the film commission.

When originally drafted there were designated tourism districts. Those districts have been eliminated, and to assure there are appointees that represent the interests of the entire state, this bill provides that members shall be appointed from each of the four congressional districts.

It is the hope of the film commission board that designated appointees will be committed to the mission and strategic plans of the Kansas Film Commission as they move forward with plans to broaden the film industry and bring full-time jobs and projects to Kansas.

A handwritten signature in cursive script that reads "Terrie Huntington". The signature is written in dark ink and is positioned above the printed name and title.

Rep. Terrie Huntington  
Vice-Chair House Economic Development  
House Appointee to the Kansas Film Commission

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Testimony on HB2232 before the  
Senate Commerce Committee  
Senator Karin Brownlee & Senator Nick Jordan  
Co-Chairmen

March 18, 2005

Senator Brownlee, Senator Jordan and members of the Committee,

My name is Barbara Nash of Olathe, Chairman of the Kansas Film Commission. Thank you for receiving this testimony in support of House Bill 2232, as amended.

The Kansas Film Commission (the statutory name is the Kansas Film Services Commission) was created by the Kansas Legislature in 1980. One of its primary purposes was to promote travel and tourism by attracting film productions to Kansas. For this reason it was located in the Division of Travel and Tourism of the Department of Commerce. The members were appointed by the Governor from the state's tourism regions.

As I am sure you are aware the film industry has become big business in recent years. This evolution caused the Department of Commerce to move the Film Commission from Travel and Tourism to the Division of Business Development in 2000. While tourism development continues to be a goal of the Film Commission, encouraging film production in Kansas as an indigenous industry and as a vehicle for economic development, is now our primary focus.

Changing the membership requirement from "designated tourism regions" to Congressional Districts would encourage the appointment of additional members from across Kansas whose primary interests are the fulfillment of the mission of the Film Commission.

On behalf of the members of the Kansas Film Commission, I urge you to recommend House Bill 2232 favorably for passage, and thank you again for receiving this testimony.

Sincerely,

Barbara Nash  
Chairman, Kansas Film Commission  
452 S. Harrison  
Olathe, Kansas 66061  
913/782-0435

Senate Commerce Committee

3-18-05

Attachment

3-1



Members of the Committee:

My name is Tracy Taylor, President and CEO of the Kansas Technology Enterprise Corporation, and I am here today with Mike Peck, Vice President of Investments, and Dan Schmisser, Vice President of Policy and Strategy, to speak in support of HB 2448, an act concerning the Angel Investor Tax Credit Act that was included in the Kansas Economic Growth Act legislative package from a year ago.

As many of you will recall, KEGA was a multi-faceted initiative intended to 1) boost the biosciences industry in Kansas, 2) support entrepreneurship throughout the state and 3) encourage equity investments in startup technology businesses. This legislation passed with overwhelming support from the House, Senate and Administration, has been enthusiastically received in local communities throughout Kansas, and is widely acclaimed by economic development practitioners throughout the U.S.

As often happens with seminal legislation, the first year of implementation yields new perspectives about the legislation based on how the market has received it. Today, we are here to discuss how the market has embraced the Angel Investor Tax Credit Act, the third segment of KEGA that was designed "to facilitate the availability of equity investment in businesses in the early stages of commercial development and to assist in the creation and expansion of Kansas businesses, which are job and wealth creating enterprises, by granting tax credits against the Kansas income tax liability of investors investing in these businesses."<sup>1</sup>

Simply put, demand for the tax credits has far exceeded the supply available for allocation. The response has been so overwhelming that the entire \$2 million of tax credits allowed for tax year 2005 has been allocated to investments in qualified businesses that have been made since January 1 of this year. In just 42 days, one year's worth of budgeted fiscal impact was absorbed:

- 20 companies were qualified by KTEC as having met the criteria provided by the Act to be eligible to receive an angel investment for which the angel investor could receive a tax credit.
- 110 angel investors have registered with KTEC through our website, [www.kansasangels.com](http://www.kansasangels.com).
- 13 companies have benefited from the program because one or more of their angel investors will receive a tax credit related to their investment. \$4.1 million has been raised by these companies from 97 angel investors in investments made on account of this Act.

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<sup>1</sup> New Sec. 74 (a) of the Kansas Economic Growth Act, HB 2647.

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Attachment 4-1

With such a positive response, our first inclination was to ask the Legislature to remove the \$2 million annual limit and see how quickly angel investors in qualified Kansas businesses would utilize the total amount of \$20 million provided for in the legislation. From our perspective, each dollar of tax credit allocated is a positive stimulus to the Kansas economy. However, we understand that expanding the fiscal impact in the current year would widen the budget gap that must be closed in other important areas.

Instead, we are proposing changes to last year's legislation that would grant KTEC greater discretion to allocate this limited resource of the state to investors in the companies most likely to yield the greatest economic returns to the state.

### **Proposed Changes in HB 2448**

The principle change to the Angel Investor Tax Credit Act is articulated in Sec. 6 of HB 2448, which reads as follows:

“Tax credits for investments in qualified Kansas businesses are a limited resource of the state for which KTEC is designated as the administrator. The purpose of such tax credits is to facilitate the availability of equity investment in businesses in the early stages of commercial development and to assist in the creation and expansion of Kansas businesses which are job and wealth creating enterprises. To achieve this purpose and to optimize the use of the limited resources of the state, KTEC is authorized to issue tax credits to qualified investors in qualified Kansas businesses. Such tax credits shall be awarded to those qualified Kansas businesses which, as determined by KTEC, are most likely to provide the greatest economic benefit to the state. KTEC may consider numerous factors in its assessment, including, but not limited to, the quality and experience of the management team, the size of the estimated market opportunity, the risk from current or future competition, the ability to defend intellectual property, the quality and utility of the business model, and the quality and reasonableness of financial projections for the business.”

This change to the existing Act removes the implicit understanding that these tax credits will be allocated on a ‘first-come, first-served’ basis which, given the scarcity of these tax credits relative to the apparent market demand, does not lead to an optimal result for the state.

We believe that KTEC, applying processes and judgments similar to those applied when we make direct equity investments in early-stage technology companies in Kansas, could ensure far better results for the state by allocating the tax credits to investors in the companies most likely to be successful.

In addition, KTEC could also allow for other considerations in making tax credit allocations that are not available today. For example, we could reserve a certain

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percentage of tax credits for investors in qualified companies that participate in emerging or strategic industries, such as bioscience, aviation, or agribusiness.

HB 2448 also includes the following minor improvements from the existing legislation:

- In Sec 2, we recommend stipulating that an angel investor is NOT an executive, officer, employee, vendor or independent contractor in the qualified business in which the investment is made. We believe that investments by individuals with other contractual or business relationships with the company may not be “arms-length” and do not comply with the intent of the legislation to create new stimulus.
- Though this is not anticipated to be an issue, we recommend stipulating in New Sec 3, par. B, that any unused tax credits from a given year can be carried over and allocated in the subsequent years until 2016.
- In Sec 4, par. c (3), we recommend adding a stipulation that publicly-traded companies are not “qualified companies” for purposes of this act. Public companies presumably have access to capital that private early-stage companies do not, and therefore they do not comply with the intent of the legislation as we understand it.
- In Sec 5, we recommend clarifying that the designation of a business as a qualified Kansas business under the Act must be renewed annually.

I will now be happy to address any of your questions or comments on HB 2448.

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Attachment

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# KANSAS Bioscience Authority

Members of the Committee:

My name is Tracy Taylor, President and CEO of the Kansas Technology Enterprise Corporation (KTEC), and I am here today with Dan Schmisser, Vice President of Policy and Strategy, to speak in support of Substitute for HB 2003, an act concerning the Emerging Industry Investment Act that was included in the Kansas Economic Growth Act legislative package from a year ago. KTEC is working on behalf of the Kansas Bioscience Authority on this matter, at the request of its Chairman, Clay Blair, until the Authority has its own resources with which to retain management and administrative staff.

As many of you will recall, KEGA was a multi-faceted initiative intended to 1) boost the biosciences industry in Kansas, 2) support entrepreneurship throughout the state and 3) encourage equity investments in startup technology businesses. This legislation passed with overwhelming support from the House, Senate and Administration, has been enthusiastically received in local communities throughout Kansas, and is widely acclaimed by economic development practitioners throughout the U.S.

KEGA was innovative in part because of the unique funding mechanism that was employed. Without raising taxes or producing a current fiscal impact, a funding mechanism was conceived that would capture the incremental tax revenue growth from the biosciences industry in Kansas and use those incremental finances to accelerate the industry growth rate. With this funding mechanism, economists from Ernst & Young forecasted that the act could produce revenues for the Kansas Bioscience Authority of \$500-\$600 million over the first 10-11 years of the 15-year act.

Today, we are here to discuss certain implementation issues, and proposed solutions to resolve them, that we discovered and have worked to resolve with the Kansas Department of Revenue (KDOR) during this first year since the passing of KEGA.

First and foremost, we have learned that certain taxes contemplated by the act would be extraordinarily difficult for KDOR to measure and, in some cases, would require companies doing bioscience in Kansas to provide supplemental tax information beyond what they are currently required to measure. Specifically, KDOR identified sales, property and license taxes as problematic. We agreed that requiring Kansas companies to produce supplemental tax schedules simply to calculate the Bioscience Authority's revenues, and where benefits accruing to the companies would only come from indirect, long-term outcomes of having a healthy and prosperous bioscience industry, would be highly unpopular and contradict the stated mission of the Authority to "make Kansas the most desirable state" to do the business of bioscience.

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Attachment 5-1



Additionally, we have learned that certain aspects of the legislation are unintentionally ambiguous, and that it is possible for reasonable persons to disagree on their interpretation. For example, a reasonable person could infer from the legislation that a NAICS code – which stands for North American Industry Classification System (NAICS) – is a precise measure of whether a company is engaged in the business of bioscience. On this premise, a reasonable person would conclude that company without one of the 20 NAICS codes specifically listed in the KEGA legislation is not engaged in the business of bioscience in Kansas.

In fact, a NAICS code is not precise, for a number of reasons. For one, the NAICS code is self-reported by companies and may be subject to error in interpretation. Second, and more significantly, the NAICS code may only capture one aspect of a company's core activities where, in fact, multiple NAICS codes could apply. This circumstance is more likely to occur with large, multi-faceted companies that occupy several points on the value chain. Consider, for example, one of the largest and most important bioscience companies in our state -- Hill's Pet Nutrition, creators of the Science Diet line of pet foods and a significant player in animal health research. Most likely, Hill's Pet Nutrition uses the NAICS code 31111, for "Animal Food Manufacturing," a code that is not listed in the KEGA legislation. One could argue that Hill's could use 325414, for "Biological Product Manufacturing," which is among the 20 codes identified in KEGA.

In partnership with the Secretary of Revenue and her staff at KDOR, we are proposing modifications to the Emerging Industry Investment Act language to 1) simplify the administrative burden on KDOR to measure and calculate the revenues that should accrue to the Bioscience Authority, and 2) clarify that the Authority and the Secretary of Revenue jointly share the ability to identify companies that are clearly doing bioscience in Kansas and include them in the revenue calculation regardless of the NAICS code they use for reporting purposes.

The solution we have devised is comprised of three key elements:

1. Only state withholding taxes from bioscience company employees (and, in fact, only 95% of those withholding taxes) will be included in the revised mechanism for determining the Bioscience Authority's revenues. To make up for the foregone income from sales, property and license taxes, the NAICS code of 622110, "General Medical and Surgical Hospitals," will be added to the list of NAICS codes in the legislation. Although the amount of withholding taxes from hospital employees is greater than the estimated non-withholding state taxes from the bioscience industry, the historical growth rate for hospital wages is much lower than what has been forecast from bioscience industry growth. Therefore, a larger "base year taxation" is necessary to maintain the integrity of revenue expectations for the Bioscience Authority.

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2. The process for determining if a company is a bioscience company is clarified. If a company has one of the NAICS codes listed in the legislation, that company would be presumed to be doing bioscience in Kansas unless verifiable evidence is produced showing that it is not. Additionally, a company that does not have one of the listed NAICS codes, such as Hill's Pet Nutrition, would be considered a bioscience company if verifiable evidence is produced showing that it is doing bioscience in Kansas and that those activities are significant to its business. A company that does not have one of the listed NAICS codes would not be added without the Bioscience Authority and the Secretary of Revenue agreeing to do so.
3. To alleviate concerns that these changes in the funding mechanism could result in revenues for the Bioscience Authority that are greater than what the 2004 Legislature had intended when it overwhelmingly voted for KEGA, an annual "cap" will be placed on the cumulative revenues paid by the state treasurer to the Bioscience Authority. The numbers used in this cap correspond to the revenue projections provided to the 2004 Legislature when they were presented with testimony and deliberated on KEGA.

The proposed changes to the Emerging Industry Investment Act included in Substitute for HB 2003 present the modifications advocated by the Chairman and the Board of the Bioscience Authority and, the Secretary of Revenue has agreed to these modifications after numerous discussions and joint evaluations between the staff of KDOR and KTEC.

Senate Commerce Committee

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Attachment

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# KANSAS

OFFICE OF THE GOVERNOR

KATHLEEN SEBELIUS, GOVERNOR

Testimony on Substitute for House Bill 2003  
Senate Committee on Commerce  
March 18, 2005

TO: Co-Chair's Karin Brownlee and Nick Jordan and Members of the Senate  
Committee on Commerce

FROM: Troy Findley, Legislative Liaison  
Governor Kathleen Sebelius

Co-Chair's Brownlee, Jordan and Members of the Committee:

I appreciate this opportunity to submit written testimony regarding Substitute for House Bill 2003, the emerging industry investment act, which proposes changes to the Kansas bioscience authority statutes.

The Governor's office has worked with the Kansas Technology Enterprise Corporation (KTEC) and the Department of Revenue on the changes to the Kansas bioscience authority statutes proposed by Substitute for House Bill 2003. The Governor's office encourages the committee to take favorable action on Substitute for House Bill 2003.

Thank you for your consideration of this written testimony.

Senate Commerce Committee

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Attachment 6-1

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# KANSAS

DEPARTMENT OF COMMERCE  
HOWARD R. FRICKE, SECRETARY

KATHLEEN SEBELIUS, GOVERNOR

## Retention of High Wage Jobs in Kansas

Proposed Amendments to the IMPACT Program  
March 18, 2005

### Reasons for Change

It is increasingly evident that communities in Kansas face strong competition in retaining businesses and jobs. Surrounding states are aggressively recruiting Kansas companies with the use of financial incentives and marketing tactics.

The best way to expand employment is to retain and grow existing businesses. The types of companies that attract the best incentives and strongest marketing efforts to relocate are high wage employers, which also tend to be corporate or regional headquarters.

Kansas is not well positioned with existing economic development tools to offer incentives to retain jobs. A number of high profile businesses are currently being recruited by other states. State recruitment and retention incentives have not been updated in more than 10 years. The time to act is now to more aggressively fight these efforts and to retain good jobs in Kansas.

### Proposed Amendments

The following amendments fit within existing program goals and financial resources. The Department of Revenue and Kansas Development Finance Authority support these proposals. They are proposed for FY 2006 only.

- Expands access by clarifying job retention is a qualifying factor to receive incentives. (Currently, retention is an eligibility factor; this just clarifies and strengthens this eligibility requirement.)
- Allows for 95% of the withholding taxes generated by a retention or expansion project to be reinvested into the company over a 20-year time period. (Currently, projects are able to receive 90% of withholding taxes up to 10 years.)
- Adds a new eligibility requirement that projects located outside metro areas must retain 100 jobs; removes the requirement that projects must spend \$50,000,000 in capital investment. (Currently, all projects within a metro area must retain 250 jobs; this keeps that requirement and adds the non-metro area requirement.)
- Eliminates the approval of the Governor's review council to obtain financing by KDFA for projects. (Secretary of Commerce in consultation with KDFA will advise the Governor of projects; removal of this provision allows for enhanced ability to respond to projects expeditiously.)
- Removes restriction on the Secretary of Commerce to offer incentives for "major project investments," which are defined as business costs, including, but not limited to, relocation expenses, building and equipment purchases, labor recruitment and job retention. (Currently, 20% of total program revenue is available for such investments.)

### Next Steps

Passage of these amendments will allow the State of Kansas to compete more aggressively in partnership with local leaders to retain good jobs in our communities.

The Department of Commerce and Department of Revenue will work with business and community leaders to craft long-term job retention strategies for review and approval during the 2006 Legislative Session.

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Attachment 7-1



## Investments in Major Projects and Comprehensive Training (IMPACT)

The IMPACT program is designed to respond to the training and capital requirements of major business expansions and locations in the state. Under certain circumstances, IMPACT may also be used for job retention projects. IMPACT has two major components: SKILL (State of Kansas Investments in Lifelong Learning) and MPI (Major Project Investment). SKILL funds may be used to pay for expenses related to training a new, and under certain instances, an existing workforce. MPI funds may be used for other expenses related to the project such as the purchase or relocation of equipment, labor recruitment, or building costs.

While there is no statutory limit on the percentage of an individual project's IMPACT funds that may be utilized for MPI, these investment funds are limited to twenty percent of the total funding available under the IMPACT program.

IMPACT costs are financed through tax exempt, public purpose bonds issued by the Kansas Development Finance Authority. These bonds are retired through the revenue received from statewide employer withholding taxes.

The maximum amount of assistance that a company qualifies for is directly related to the number of new jobs created or retained and the taxable wages of those jobs over ten years. If the company is unable to create jobs in sufficient numbers to generate withholding tax revenue according to its annual projections, the business may be required to repay a portion of the funds on a shared basis with the state. If the company leaves the state before the bonds are retired, the full cost must be repaid, less any withholding tax contributions collected prior to the company's departure.

Program	Investments in Major Projects and Comprehensive Training (IMPACT)
Company Eligibility	New and expanding basic enterprises (individual firms or consortiums of businesses) that are creating new jobs. IMPACT is typically reserved for projects involving at least 100 new jobs at a higher-than-average wage. The IMPACT program may also be used for job retention projects that have compelling economic benefit for Kansas. Minimum requirements to qualify: 250 jobs, \$50 million capital investment
Eligible Costs	Instructor's salaries; travel, meals, and lodging; textbooks; supplies and materials; minor equipment; certain utility costs; temporary training facilities; and curriculum planning and development. Also, up to 50 percent of funds may be used to lease or purchase training equipment for local educational institutions. Ten percent of the total workforce training funds committed to each project is set-aside in the workforce solutions trust fund to help workforce training institutions throughout the state respond more effectively to business needs. The MPI component allows a portion of total funds to be used for relocation expenses, labor recruitment, building purchases, equipment, etc.
How To Apply	The company and a Kansas public educational institution jointly submit a proposal. Staff negotiates a funding amount based on the level of training required, the efficiency of the project, and the quality of the jobs; and subsequently recommend the project to the Governor's Council on Workforce Training and Investment for final approval.

Senate Commerce Committee

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Attachment 8-1



Sub  
Amendment to HB 2003  
Department of Commerce  
March 18, 2005

**74-50,104. Administration of act; powers and duties of secretary of commerce; rules and regulations, standards and priorities for projects; limit on project costs; notice of project approval.** (a) The secretary shall administer the provisions of this act and the IMPACT program established thereunder. The secretary shall encourage Kansas basic enterprises with similar training needs to cooperate in establishing SKILL projects. The secretary shall coordinate the SKILL program with other job training programs administered by the department of commerce. The secretary shall provide opportunities for coordination and cooperation of SKILL projects with other job training activities in Kansas. Subject to the limitation in K.S.A. 74-50,103, the secretary shall be authorized to make direct investments in educational and related workforce development institutions, for the purpose of promoting improvements in workforce development, human capital, \_\_\_\_\_ [and job retention] training expertise, ~~and~~ infrastructure. \_\_\_\_\_ [.]

(b) The secretary shall adopt rules and regulations as follows: (1) Prescribing review standards and priorities for approval of proposed agreements under this act, including appropriate incentives for cooperation among projects, in order to maximize the number of new jobs created \_\_\_\_\_ [or retained] with respect to individual Kansas basic enterprises, which will remain in Kansas, and (2) prescribing limits on program costs and on project and program size in relation to the number of new jobs created ~~or the wages of new jobs created~~ \_\_\_\_\_ [and wages of new or retained jobs]. No agreement shall be approved which provides for program costs of a project under the \_\_\_\_\_ [95%] agreement of more than ~~90%~~ [90%] of the amount equal to the estimated rate of withholding tax applied to the estimated \_\_\_\_\_ [or retained] amount of gross wages of all the new jobs \_\_\_\_\_ [twenty] under the project over a ~~ten~~ [ten] year period.

(c) Notice of the approval of a project or program under the IMPACT act shall be \_\_\_\_\_ [and an annual report of the number of jobs created or retained]

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provided to the chairpersons of the senate committee on commerce and the committee on economic development of the house of representatives.

(d) The secretary may adopt such other rules and regulations as may be required for the implementation and administration of this act.

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**74-50,105. Project agreements between educational institutions and employers; provisions, approval; expenditures for major project investments; lien for required employer payments; deferral of program costs, limit.**

(a) Subject to the approval of the secretary of commerce, an educational institution may enter into an agreement to establish a project and provide program services to an employer. As soon as possible after initial contact between an educational institution and an employer regarding the possibility of entering into an agreement, the educational institution shall inform the secretary of commerce about the potential project. ~~If an agreement is entered into, the educational institution, [and] the employer shall notify the secretary of revenue within 15 calendar days.~~

[The secretary is also authorized to enter directly into agreements with employers for benefits under the act.]

(b) Among other provisions, an agreement shall include:

[secretary,]  
[or]

(1) Provisions regarding payment of program costs, including deferred costs, which may be paid from one or a combination of the following sources:

(A) The IMPACT program services fund;

(B) tuition, student fees, or special charges fixed by the educational institution to defray program costs in whole or in part; and

(C) grants or donations available from federal agencies or other public or private sources;

(2) a provision requiring each Kansas basic enterprise under the agreement to submit information to the secretary of commerce regarding the numbers of new jobs and the wages and withholding taxes paid therefor;

[or retained]

(3) a provision which fixes any tuition and fee payments which shall be paid for program costs; and

(4) a provision which fixes an amount that shall be paid by an employer if an agreement is terminated or any provision of the agreement is breached by the employer prior to satisfaction of all of the employer's obligations under the agreement and which

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prescribes that any such payment shall be deposited in the state treasury to the credit of the IMPACT program services fund.

(c) Any payment required to be made by an employer shall be a lien upon the employer's business property until paid and has equal precedence with ordinary taxes and shall not be divested by a judicial sale. Property subject to the lien may be sold for sums due and delinquent at a tax sale, with the same forfeitures, penalties and consequences as for the nonpayment of ordinary taxes. The purchasers at tax sale obtain the property subject to the remaining payments.

(d) The payment of program costs incurred under any agreement shall not be \_\_\_\_\_ [20] deferred for a period longer than [10] years from the date of the commencement of the project.

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**74-50,106. Review and approval of proposed agreements by secretary of commerce and governor's council on work force training and investment; guidelines, employer eligibility and requirements. (a)**

The secretary of commerce shall review applications for proposed agreements submitted by employers in accordance with the standards and guidelines prescribed by this act and by rules and regulations adopted under K.S.A. 74-50,104, and amendments thereto. Each application for approval of a proposed agreement shall be accompanied by information about the number and wages of the new or retained jobs created by the employer, documentation of existing training activities of the employer and such other information as may be required by the secretary of commerce.

(b) The secretary of commerce may pool the funding requirements of projects which are the subject of proposed agreements to determine the funding requirements of the [SKILL] projects under consideration to [IMPACT] facilitate the issuance of bonds by the Kansas development finance authority.

(c) The secretary of commerce is hereby authorized to expend funds raised pursuant to this act on major project investments. The secretary shall adopt guidelines consistent with this act concerning firm eligibility for major project investments and shall otherwise administer the major project investment portion of the IMPACT act.

(d) In order for an employer to be eligible for a major project investment, the employer must:

(1) Annually make an investment in training and education of the employer's employees that exceeds 2% of the employer's total annual payroll costs; or

(2) agree that a portion of any funds available under the agreement be spent directly on employee education and training.

(e) An employer not creating new jobs shall not be eligible for participation in an

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IMPACT program unless the employer meets the following criteria: (1) Maintains a minimum of 250 retained jobs; [and] (2) [makes a capital investment of at least \$50,000,000;] [if located in a metropolitan statistical area or a minimum of 100 retained jobs if located in a non-metropolitan statistical area] [and] (3) the secretary of commerce finds that the program or project will be a major factor in the Kansas basic enterprise remaining in Kansas.

(f) ~~[Prior to obtaining financing from the Kansas development finance authority for any project, group of projects or major project investment for one or more employers, the secretary of commerce shall present each such project to the governor's council on work force training and investment for review and approval. No agreement shall be approved by the secretary of commerce unless each project under the agreement has been reviewed and finally approved by the governor's council on work force training and investment.]~~

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**74-50,107. Certification by secretary of commerce of estimates of new jobs and wages and of debt service and direct funding rates for IMPACT program, limitation; crediting amounts to IMPACT program funds; duties of secretary of revenue.**

(a) The secretary shall determine and from time to time shall redetermine the rate at which moneys shall be credited to the IMPACT program repayment fund in order to satisfy all bond repayment obligations which have been incurred to finance program costs for IMPACT programs (which shall be referred to as the debt service rate) and the rate at which moneys shall be credited to the IMPACT program services fund in order to finance program costs that are not financed by bonds (which shall be referred to as the direct funding rate). The total of the debt service rate and the direct funding rate shall be the combined rate. Each rate so determined shall be certified to the secretary of revenue. The combined rate determined under this subsection shall not exceed 1.5%. On and after July 1, 2005, the combined rate determined under this subsection shall not exceed 2%.

(b) Upon receipt of the rates determined and certified under subsection (a), the secretary of revenue shall apply daily the combined rate to that portion of the moneys withheld from the wages of individuals and collected under the Kansas withholding and declaration of estimated tax act K.S.A. 79-3294 *et seq.*, and amendments thereto. The amount so determined shall be credited as follows: (1) The portion attributable to the debt service rate shall be credited to the IMPACT program repayment fund, and (2) the remaining portion shall be credited to the IMPACT program services fund.

~~[The aggregate of all amounts credited to the IMPACT program repayment fund under this section during any fiscal year to pay bond repayment obligations on bonds to finance major project investments shall not exceed~~

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20% of the amount which results when the rate of 1.5% is applied to all moneys withheld from the wages of individuals and received under the Kansas withholding and declaration of estimated tax act.]

On and after July 1, [2005], the aggregate [2006] of all amounts credited to the IMPACT program repayment fund under this section during any fiscal year to pay bond repayment obligations on bonds to finance major project investments shall not exceed 20% of the amount which results when the rate of 2% is applied to all money withheld from the wages of individuals and received under the Kansas withholding and declaration of estimated tax act.

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THE OLATHE CHAMBER OF COMMERCE  
142 NORTH CHERRY STREET; P. O. BOX 98  
OLATHE, KANSAS 66051-0098

Testimony for the Senate Commerce Committee  
Submitted by Diane Costello  
Vice President, Government Affairs

Friday, March 18, 2005

Madame Chairman and Mister Chairman, and members of the Committee, I thank you for the opportunity to speak before you this morning.

Growing the economy in Kansas has been a primary motivator behind every new economic initiative the past few years. While this committee along with the entire legislature has demonstrated considerable ingenuity and creativeness in bringing forth new and retooled initiatives designed for the attraction of new business, we have not put that same level of energy into incentives for retaining our bedrock businesses throughout the state. Unfortunately, while we have always recognized that the best way to grow the economy is to foster job growth, we have neglected our existing businesses. As a result, these same bedrock companies are quickly being recruited to not just neighboring states but states that have also developed stronger and more aggressive business attraction incentives. To stop the immediate bleeding, it is essential that Kansas put together packages that afford our Kansas companies, strong incentives to stay in Kansas and continue to grow their business and employ our workers.

Sadly, it has been more than 10 years since we have seriously examined our state retention incentives. The re-examination of these incentives is the long-term solution. In the short-term, the Olathe Chamber of Commerce strongly supports the efforts of the Department of Commerce in creating amendments to HB 2232 as stopgap measures designed to prevent the loss of essential businesses and jobs in Kansas.

We urge you to support these amendments and help develop the twenty-first century tools necessary to be competitive in not only the recruitment of business but also more importantly, the retention of business. We look forward to working with you and the Department of Commerce in the weeks and months ahead as we together, use our ingenuity and creativeness in drafting new economic policies and tools that are in the best interest of Kansas businesses, taxpayers and ultimately our economy.

Thank you for allowing me to speak today.

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## Legislative Testimony

HB 2232

March 18, 2005

**Testimony before the Kansas Senate Commerce Committee  
By Marlee Carpenter, Vice President of Government Affairs**

Co-Chair Brownlee, Jordan and members of the committee;

The Kansas Chamber of Commerce supports the proposed amendments to the IMPACT program that the Kansas Department of Commerce has offered to HB 2232. Our members believe that economic development programs and incentives are important as we work to improving the business climate and reducing the cost of doing business in the state.

The proposed change would remove the 20% requirement for only one year and give the Secretary of Commerce additional flexibility when looking to retain jobs in the state. The incentives that can be made available when lifting the 20% cap are the types of incentives that other states offer with regularity and are aggressive in letting businesses know about them.

Job retention in Kansas is important as Kansas is ranked as leading the nation in job loss. Any effort to attract and retain jobs in Kansas is important to the health of the state.

Again, the Kansas Chamber supports the proposed amendments and we urge the committee to support them as well.



**THE KANSAS  
CHAMBER**

The Force for Business

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*The Kansas Chamber, with headquarters in Topeka, is the statewide business advocacy group moving Kansas towards becoming the best state in America to do business. The Kansas Chamber and its affiliate organization, The Kansas Chamber Federation, have more than 10,000 member businesses, including local and regional chambers of commerce and trade organizations. The Chamber represents small, medium and large employers all across Kansas.*

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*The Historic Lackman-Thompson Estate*

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 Lenexa, KS 66219-1236  
 913.888.1414  
 Fax 913.888.3770

March 17, 2005

To: Senator Karin Brownlee, Co-Chairman  
 Senator Nick Jordan, Co-Chairman  
 Members, Senate Commerce Committee

From: Blake Schreck, Lenexa Chamber of Commerce

RE: Amendments, HB 2448

Please accept this as testimony to our support of the proposed amendments to HB 2448.

While most attention is paid to the recruitment of new businesses to our state, the numbers show that the vast majority of new job creation and new capital investment in Kansas come from maintaining and growing our existing business base.

Existing incentives at both the state and local levels are geared toward attracting new industry. These proposed amendments to HB 2448 are important and timely first steps in addressing the imbalance that exists regarding existing versus new incentives and could serve as a springboard for creating a comprehensive retention program for the State of Kansas.

On behalf the Lenexa Chamber of Commerce, we ask for your support of these proposed amendments, and thank you for your consideration of our comments.

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Written testimony – supporting amendments to HB 2232  
Senate Commerce Committee  
Provided by: Christy Caldwell, Vice President Government Relations  
Greater Topeka Chamber of Commerce

Senator Brownlee, Senator Jordan and members of the Commerce Committee, the Greater Topeka Chamber of Commerce would like to express our support for amendments being offered to HB 2232, to assist in the retention of jobs in Kansas.

As you know over the last few years it has been a struggle to retain several companies in Kansas. Our community, Topeka/Shawnee County, has come before you asking for your assistance in a couple of instances, Innovia Films has been the most recent. We believe it is critical to retain these quality companies, even as we all work hard to bring new expansions and new companies to Kansas. The IMPACT legislation is a tool to assist in retention that is currently available through the Department of Commerce. (Innovia would not qualify for the IMPACT program because of requirements for \$50 million in capital investments and a minimum of 250 jobs to access the program.) However it has become increasing evident that there needs to be some flexibility in state incentive programs to make them more effective in working with Kansas communities to keep companies and jobs in our state.

The Department of Commerce has worked hard with local communities utilizing the IMPACT program where possible, but could be more effective if allowed more flexibility. The amendments being offered clarify job retention as a qualifying factor to access this program. It would allow the Secretary of Commerce flexibility in the type of assistance that IMPACT can provide, which would greatly enhance its effectiveness. Currently only 20% of the funds can be used as a non-training incentive. Companies have differing needs, some will need help with training, however others may need assistance with equipment purchases, recruitment, relocation expenses, or other business costs. With these amendments, the Secretary would have the ability to assess what would be most beneficial to help keep a company and/or jobs in Kansas, if they qualify for this program. The amendment is written to allow this flexibility for only one fiscal year; this will give you and the Secretary time to determine its effectiveness and look at long-term job retention strategies. The amendments would also allow for 95% of the withholding taxes generated by the retention (or expansion) to be reinvested in the company, rather than the current 90%.

We know the Department of Commerce wants to find ways to develop effective strategies for the retention of jobs in Kansas. Our community encourages this effort; we have been in the situation of asking for assistance from the legislature because there are not existing programs available to help us keep good employers when there is a crisis. We would like to work with the Department to development programs that will be beneficial statewide.

We ask for your support for the amendments offered to HB 2232. Your previous responses to us when we have asked for your help has been wonderful, these changes are a beginning to making state policy address similar issues statewide. Thank you.



Testimony in Support of Amending HB 2232

My name is Patrick French. I am Director of the Greater Wichita Area Economic Development Coalition and affiliated with the Wichita area Chamber of Commerce. I ask that this Committee look favorably upon the proposed amendments to HB 2232.

Having been a professional in economic development for ten years and having practiced in both Kansas and Missouri, I can testify that the retention and growth of existing businesses is critical to maintaining and growing local economies.

The Wichita area has a strong industrial base with five aviation OEMS and, with the sale of Boeing Commercial to Onex, one of the world's largest aerospace suppliers. Currently, our community has almost 34,000 people employed in aviation and aerospace alone. During the last downturn in the aviation sector our community lost 12,000 high, paying manufacturing jobs. Even though the industry has begun adding jobs again, our community continues to be at risk as many of those lost jobs are being outsourced

Our community is also home to corporate headquarters such as Koch Industries, Cessna Aircraft Company, Cargill Meat Solutions and Invista.

In an increasingly global economy, high paying jobs, both blue and white collar, are being sought out by other communities, other states and even other countries. This is an urgent issue requiring urgent action to protect our existing companies.

The proposed amendments would give Kansas better tools to retain businesses and quality jobs and would assist our local economic development efforts to protect our economic base.

Both the Wichita Area Chamber of Commerce and the Greater Wichita Economic Development Coalition strongly support the proposed changes to HB 2232 which will create a better, more efficient retention tool for the Kansas Department of Commerce and our Kansas communities, and ask this Committee to give their amendments all due consideration.

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