Approved: February 6, 2008
Date

MINUTES OF THE HOUSE ECONOMIC DEVELOPMENT AND TOURISM COMMITTEE

The meeting was called to order by Vice-Chairman Terrie Huntington at 3:30 P.M. on February 4, 2008 in Room 519-S of the Capitol.

All members were present except:
Owen Donohoe- excused

Committee staff present:
Emalene Correll, Kansas Legislative Research Department
Ryan Hoffman, Kansas Legislative Research Department
Jason Long, Office of the Revisor of Statutes
Matt Todd, Office of the Revisor of Statutes
Ann Deitcher, Committee Assistant

Conferees appearing before the committee:
Representative Charlie Roth
Dennis Lauver, Salina Area Chamber of Commerce
Mark Burghart, Kansas Chamber of Commerce & Industry
James Bartle, General Council, Dept. Of Revenue

SB 363 - Rural housing incentive district act; size of counties and cities eligible.

The Vice-Chair called on Representative Roth who then introduced Dennis Lauver. (Attachment 1).

Mr. Lauver addressed the Committee in support of **SB 363**, saying he knew that others across the state will confirm that significant linkage exists between economic development, a sufficient quantity of quality labor and the availability of affordable housing. He said that people must be able to find quality affordable housing as they consider if they want to live and work in Kansas.

Questions and answers followed.

Written only testimony in favor of **SB 363** was distributed from Jason A. Gage, Salina City Manager, (Attachment 2); and Ray Barmby, Olathe, KS, (Attachment 3).

The hearing on **SB 363** was closed.

HB 2603 - Concerning income taxation; relating to credits; clarifying the definition of qualified business facility employee and qualified business facility investment.

Appearing before the Committee as a proponent of **HB 2603** was Mark Burghart. (Attachment 4).

Speaking in support of a clarification measure that is important to corporations doing business in the state, Mr. Burghart said he believed this clarification was entirely consistent with the intent accompanying the original enactment of the tax credit legislation which was to promote capital investment and job creation within the State of Kansas. He felt that was exactly what was accomplished under this bill.

Questions and answers followed.

Written only testimony from Ashley Sherard of the Lenexa Chamber of Commerce in support of **HB 2603** was distributed. (Attachment 5).

MINUTES OF THE House Economic Development and Tourism Committee at 3:30 P.M. on February 4, 2008 in Room 519-S of the Capitol.

Addressing the Committee in opposition of **HB 2603** was James Bartle. (Attachment 6).

Mr. Bartle explained that the Department of Revenue opposes **HB 2603** because it would unnecessarily complicate and confuse the computation of the B & J credit and might also adversely affect other credit programs, including HPIP.

SB 497 - Creating the Kansas investment credit act and the Kansas jobs credit act.

The Department believes that **SB 497** provides a better, simpler way in which to provide income tax incentives to taxpayers who make investments in Kansas and hire Kansas workers.

Questions and answers followed.

The hearing on **HB 2603** was closed.

The meeting was adjourned at 4:10 p.m. The next meeting is scheduled for Tuesday, February 5, 2008.

Salina
Area Chamber *of* Commerce

Kansas House Economic Development Committee Testimony re: Senate Bill 363

Comments by:
Dennis W. Lauver
President/CEO
Salina Area Chamber of Commerce

Madame Chair and members of the committee, thank you for the chance to speak with you today in support of SB 363. I specifically thank Representative Roth for his support of this legislation and for his help in bringing the bill to this point.

Senate Bill 363 is a response to an issue that limits the ability of several Kansas communities to add good paying jobs and private sector capital investment. This limiting issue is the availability of labor. The labor availability issue is complex and there is no single "silver bullet" to resolve this issue. To continue job creation, we must have the sufficient quantity and quality of labor to meet the needs of employers.

I serve on the board of directors of the Kansas Economic Developers Alliance and I know others across the state will confirm that significant linkage exists between economic development, a sufficient quantity of quality labor and the availability of affordable housing. I've worked in the field of economic and community development since 1989 and I know Kansas is not the only state with this challenge. In the past, I've been chosen to present comments at national economic development conferences about the link between housing and quantity of labor and I know that other states are working to develop and implement solutions. Kansas can gain a competitive advantage over other states by addressing our labor quantity challenges with the development of housing that is affordable for working families.

We have come to believe that improving the availability and affordability of housing is part of the solution for Salina and Saline County – and we know that is the case for other parts of Kansas. People must be able to find quality affordable housing as they consider if they want to live and work in Kansas. In the case of Salina, we are moving forward with a unique community-based approach that will develop housing in the medium-priced range that we need to help attract workers for our employers.

We think the path to providing affordable and available housing lies in reducing the "shovel ready" cost of development. We are ready to implement some strategies so that the public and private sector can work together to achieve this objective that will help with labor availability issues.

In simple terms, the Kansas Rural Housing Incentive District Act allows a City (or County in unincorporated areas) to issue bonds to help make new affordable housing a reality. The proceeds from the sale of the bonds may be used to pay for land, site preparation, roads, sidewalks, street lighting, water, plus sanitary and storm sewer. The bonds pay all of the land acquisition and infrastructure costs but not the cost of the homes. The land and all of the site improvements are conveyed to the developer at no cost, thus lowering the "shovel ready" cost of a housing lot. SB 363 will allow communities like Salina, with a population between 40,000 and 60,000 to access the toolbox to help create jobs by addressing the labor quantity issue via the creation of affordable housing.

The principal and interest of the bonds are paid from the real estate taxes paid by owners of homes. The developer sells lots to builders and to prospective homeowners with the understanding that a house or apartment will be constructed on the lot within two years.

We are eager to support growth in the communities around Salina. We desire for cities like Lindsborg, McPherson, Abilene, Beloit and Bennington to grow. We also desire to address the underlying factors limit our economic development. SB 363 will expand the toolbox of local governments like Salina and Saline County to create affordable housing – and help us to address other vexing issues that limit our economic activity and job creation.

The fiscal impact statement completed last year concluded there is no impact on the state budget.

We urge you to support SB 363 to forward the bill to the full House for adoption and forward to the Governor.

Thank you for the opportunity to speak to you about this issue and I will be happy to answer any questions you have.

CITY MAN... R'S OFFICE
Jason A. Gage
City Manager
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City of Salina

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SB 363 Testimony to Senate Commerce Committee

By: Jason A. Gage

LEGISLATIVE REQUEST:

I am sorry that I will not be available to personally testify on behalf of SB 363. I am confident that Salina Area Chamber of Commerce Director Dennis Lauver will represent the issue well and be able to address any questions you may have.

I can say that the City of Salina is very supportive of your consideration to amend K.S.A. 2006 Supp. 12-5242 by supporting the passage of Senate Bill 363 for the following reasons:

1) The cost of housing has become a significant challenge for all communities and rural areas, regardless of size;
2) Salina, like other communities is experiencing significant increases in cost for housing for all income levels;
3) Housing cost challenges can result in significant community impacts, such as: reducing available income of residents that is needed for other necessary purposes, artificially creating an inefficient commuter-oriented environment; and increasing the difficulty of finding necessary labor for key business employment;
4) The additional financing options that are offered through the Rural Housing Incentive Act can provide a tool to local government that can be used to reduce the cost of housing for numerous housing types and income levels; and
5) In Salina, we believe we can use this tool in conjunction with our local home builders to stabilize costs and housing availability.

FINANCIAL AND/OR TAXING IMPLICATIONS:

We do not find that this item will have any negative financial or taxing impact on the State of Kansas, any other municipality, local homebuilders or homebuyers.

Thank you once again for taking the time to consider SB 363, which we believe to be a worthwhile statutory revision request that can result in tangible community benefit.

5-2

ECONOMIC DEVELOPMENT FUNDING
1015 So. Lennox Drive
Olathe, KS 66062

Mailing Address:
P O Box 4673
Olathe, Ks 66063

Good Morning – Madame Chairman, Committee Members, Ladies and Gentlemen. My name is Ray Barmby, I live in Olathe and am a self employed economic development financing consultant having spent more than 40 years working with cities, counties and business enterprises across Kansas solving their fixed asset financing needs. I am a former elected Mayor and Council Member of the City of Olathe.

I am proud of having prepared the first housing needs analysis required pursuant to the Rural Housing Incentive District Act (the "Act") resulting in its acceptance by the Secretary of Commerce and approval of an issuance of municipal bonds as the means of funding infrastructure development.

I appear in support of Senate Bill 363. Your recommendation for full Senate adoption of the amendment to the Act in no way detrimentally affects Johnson, Sedgwick, Shawnee, Douglas or Wyandotte Counties. The proposed amendment is one which should be embraced and strongly supported by those counties if for no other reason that its adoption into law can and will help to sustain and, in some instances, preserve communities into the future. I am sure we can all agree that rural communities need jobs and workers if they are to survive. But I suggest to you that the endless pursuit by our Department of

Commerce for those rural employers and their paychecks is stymied by the lack of decent, safe and affordable single or multi family housing. It is not sufficient for a community to solve most, if not all, of its new housing needs though expansion or development of mobile home parks. Given a choice, every community would choose permanent forms of housing rather than that which has the appearance of being temporary. By and large a single or multi-family housing development can be completed within the same approximate time span for the erection of a manufacturing plant. The Act currently prohibits any city in Leavenworth, Reno, Riley, Butler, Saline and possibly Finney, Crawford and Cowley counties benefiting from the Act which the Legislature adopted into law nine years ago because of a population restriction of 40,000. SB 363 raises that population ceiling to 60,000 thereby allowing communities in those counties to broaden their respective economic and tax bases.

Speaking selfishly I hope SB 363 is adopted in this session of the Legislature for I believe that the residents and businesses of the largest counties will be looked upon in the future as a source of funding with which our State Government takes steps to preserve those rural communities that have not been able to grow in terms of population and jobs. The big counties will grow economically and in population but for rural communities the future is not as optimistic unless we can place into their hands a tool with which they can grow and prosper. That tool is the Rural Housing Incentive District Act which I ask you to amend in favor of those 100 counties which are not so blessed with a Boeing, Goodyear, General Motors, Sprint or Hallmark facility.

Phone: 913-449-1421 Fax: 913-393-1379 E-Mail: rb1223@kcnet.com

MEMORANDUM

To: Representative Lana Gordon, Chairperson
House Committee on Economic Development

From: Mark A. Burghart
Kansas Chamber of Commerce and Industry

Date: February 4, 2008

Re: House Bill No. 2603

Thank you for the opportunity to appear in support of a clarification measure that is important to corporations doing business in the state. H.B. 2603 would clarify the Job Expansion and Investment Credit Act, K.S.A. 79-32,153 et seq., and the Kansas Enterprise Zone Act, K.S.A. 79-32,160a, as these Acts relate to capital expenditures and job creation by corporations which are part of a unitary group. As you know, under both Acts, income tax credits are awarded for making capital expenditures and creating jobs in Kansas. It is important to note that the bill does not make any changes to the High Performance Incentive Program ("HPIP") credit.

Kansas employs the unitary business principle when taxing multistate corporations. Under this principle, the income and expenses of all related companies included in a unitary group are aggregated and then apportioned to the various states in which the unitary business conducts business operations based on a three factor formula that includes property, payroll and sales. All companies within a unitary group are deemed to contribute to and depend upon one another and thus are treated as one homogeneous business enterprise for corporate income tax purposes. The application of the unitary business principle has been sanctioned by the Kansas Supreme Court on several occasions.

The Kansas Department of Revenue currently interprets the Job Expansion and Investment Credit Act and Enterprise Zone Act to require that all capital investment and employee hiring occur within the same corporate entity in order to qualify for the credit. The current policy differs from that which had been in place in prior years when employee hiring and capital investment were not required to occur within the same corporate entity in order to qualify. Prior policy allowed companies to qualify for the credits if the company making the capital investment also directed the new employees who may actually be employees of a separate corporate entity.

Under the clarifying legislation, if capital investment is made by a company within a combined group and employees are hired or maintained by another company within the same combined group, then the capital investment and new employees would qualify for the credit authorized by K.S.A. 79-32,153 and K.S.A. 79-32,160a. We believe this clarification is entirely consistent with the intent accompanying the original enactment of the tax credit legislation which was to promote capital investment and job creation within the State of

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Kansas. That is exactly what is accomplished under the bill. Moreover, as a matter of principle, if all investment and employee hiring by companies within a unitary group are deemed to contribute to the unitary enterprise as a whole, then it should not matter that the investment and employee hiring do not occur within the same corporation. We believe H.B. 2603 represents a logical extension of the unitary business principle.

This approach also would be consistent with the Kansas Department of Commerce's policy under the High Performance Incentive Program ("HPIP"), K.S.A. 74-50,131 et seq. Under K.A.R. 110-6-3, employees are not required to be employed by the same legal entity making the investment in order to satisfy the wage requirements under the HPIP program. The treatment under the various tax credit programs should be consistent. There is no cogent reason justifying the disparate treatment.

Corporations require a stable state tax environment. This legislation merely codifies what was once the Department's interpretation of the controlling statutes and provides needed stability to the Kansas income tax credit structure. It also recognizes that corporations in a unitary group are organized and operate in ways and for reasons that may be totally unrelated to state tax issues. Corporations should not be penalized under these tax credit programs for selecting an efficient corporate structure when the legislative objectives of increasing capital investment and creating additional jobs in the state are otherwise being met. I would be happy to provide any additional information or respond to any questions that the Committee may have. Thank you for your continuing efforts to make Kansas an attractive environment for businesses to locate and expand.

Lenexa Chamber of Commerce

The Historic Lackman-Thompson Estate

11180 Lackman Road

Lenexa, KS 66219-1236

913.888.1414

Fax 913.888.3770

TO: Representative Lana Gordon, Chairperson
Members, House Economic Development Committee

FROM: Ashley Sherard, Vice-President
Lenexa Chamber of Commerce

DATE: February 4, 2008

RE: **Support for HB 2603 – Tax Credits/Unitary Groups**

The Lenexa Chamber of Commerce appreciates the opportunity to express its support for HB 2603, which would clarify that capital investment and job creation tax credits may be claimed by certain members of a unitary group.

Under current law, tax credits that have been earned for such economic development activity as capital investment or job creation may only be claimed by certain entities. In many instances that eligible entity has insufficient tax liability to utilize the entire credit earned, and any unused portion must be carried forward. Because tax credits that are carried forward are not refundable or transferable and often are never able to be claimed by the eligible entity, the perceived value of those tax credit programs to companies considering locating or expanding in Kansas can be significantly diminished, damaging the state's ability to compete nationwide for business activity.

It is therefore critical for Kansas to interpret as broadly as possible the entities against whose tax liability economic development tax credits may be claimed. The Kansas Department of Revenue currently interprets the Job Expansion and Investment Credit Act and Enterprise Zone Act to require that all capital investment and employee hiring occur within the same corporate entity in order to qualify for the credits. Prior KDOR policy allowed companies to qualify for the credits if the company making the capital investment also directed the day–to-day activities of the new employees, even if those employees were technically employees of another corporate entity -- HB 2603 would codify this original interpretation, which we strongly believe is both better economic development policy and consistent with the intent of the legislation when it was enacted.

By safeguarding and facilitating companies' ability to convert earned tax credits into actual value, the state would help preserve the power of these capital investment and job development tax credit programs to influence and promote key economic growth activities. For the same reasons, we would also urge you to consider similar changes in the treatment of unitary groups in relation to tax credits earned through the High Performance Incentive Program (HPIP).

Because we believe HB 2603 embodies an important clarification to tax credit programs that have been key to the state's ability to effectively compete in attracting and retaining businesses, the Lenexa Chamber of Commerce urges the committee to recommend HB 2603 favorable for passage. Thank you for your time and attention to this important issue.

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KANSAS
DEPARTMENT OF REVENUE

Kathleen Sebelius, Governor
Joan Wagnon, Secretary

www.ksrevenue.org

Testimony to the House Committee on Economic Development and Tourism
James Bartle, General Counsel, Kansas Department of Revenue
February 4, 2008

Department of Revenue's Testimony in Opposition to House Bill 2603

Representative Gordon, Chair, and Members of the Committee:

Under current law, an income tax credit (B & J credit) is allowed under the Job Expansion and Investment Credit Act of 1976, K.S.A. 79-32,153 *et seq.*, and amendments thereto (the Act), when a taxpayer invests in a qualified business facility and hires and retains qualified business facility employees as a direct result of such investment. House Bill 2603, as introduced, would amend certain definitions contained in the Act to allow the credit computations to be based on the employment of qualified business facility employees by any member of a unitary group as a direct result of investments made by any member of a unitary group.

The Department of Revenue and the Department of Commerce have proposed Senate Bill 497 to replace the existing B & J credit and the High Performance Incentive Program (HPIP) investment tax credit. SB 497 provides separate credits for investment and jobs, thereby eliminating the requirement in current law that the entity making the investment must also hire the employees in order to receive the credit. The Department believes that SB 497 avoids the problems that would arise if HB 2603 were to be enacted, several of which are summarized as follows:

- The B & J credit can be claimed by "any taxpayer who shall invest in a qualified business facility." HB 2603 does not explain how the credit shall be claimed when investments in a single facility are made by two or more members of a unitary group. And because qualified business facility employees would include persons employed by two or more members of the unitary group, there will be increased difficulty in determining whether a net increase in employment has been achieved and sustained as a result of the qualifying investment.

- The amount of credit that may be claimed is limited to 50% of the tax imposed on a taxpayer's qualified business facility income. Since a two-factor formula consisting of property and payroll is used to determine a taxpayer's qualified business facility income, a taxpayer who invests in a qualified business facility but does not employ any qualified business facility employees will have a 0% payroll factor, despite the fact that qualified business facility employees are employed by other members of the combined group.

- The B & J credit extends over a 10-year period and is recomputed on an annual basis to account for fluctuations in investment and employment. Changes in the composition of the unitary group at any stage of the 10-year period could affect the amounts of investment and employment used for purposes of computing the credit and could result in elimination of the credit in its entirety.

- The statutory provisions contained in K.S.A. 79-32,160a, which authorize the HPIP investment credit and the enhanced B & J credit for investment and employment in an Enterprise Zone, are part of and supplemental to the Act. The proposed modifications to the definitions of "qualified business facility employee" and "qualified business facility investment" contained in the Act could dramatically increase the amounts of HPIP and Enterprise Zone credits that could be claimed.

In summary, the Department of Revenue opposes HB 2603 because it would unnecessarily complicate and confuse the computation of the B & J credit and might also adversely affect other credit programs, including HPIP. The Department believes that SB 497 provides a better, simpler way in which to provide income tax incentives to taxpayers who make investments in Kansas and hire Kansas workers.