

MINUTES OF THE HOUSE ECONOMIC DEVELOPMENT AND TOURISM COMMITTEE

The meeting was called to order by Chairman Lana Gordon at 3:30 P.M. on March 11, 2008 in Room 519-S of the Capitol.

All members were present except:

Geraldine Flaharty- excused
Judy Morrison- excused
Robert Olson- excused
Annie Tietze- excused

Committee staff present:

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:

Peter Jasso, Kansas Film Commission Manager
Jeff Conway, Legislative Liaison, Department of Commerce
Carole Jordan, Director, Agriculture Marketing & Community Development Division
Kansas Department of Commerce

The Chair introduced Peter Jasso who gave a briefing on the Kansas Film Commission (Attachment 1).

Mr. Jasso said that the purpose of the Commission was to serve as a liaison between prospective film makers and the state of Kansas, as well as encourage and support the local film industry. He said that their staff had been downsized from 3 to 1 but they are in the midst of not only getting their website updated but trying to provide the best service possible.

In answer to what the annual budget for Film Commission was, Mr. Jasso said it was \$100,000.

Other questions and answers followed.

SB 489 - concerning economic development; regarding regional foundation funds.

Jason Long explained **SB 489** to the Committee saying it would enact certain provisions that would restrict what those contributions which go into regional foundation funds could be used for. He pointed out page 4, line 3 of new sub-section (e) adding to the law would basically be a statement that the funds in the regional business development funds are intended to be distributed to qualified entrepreneurs for the purposes of economic and leadership development in the region.

The allocation of the funds by each regional foundation was listed on page 4, in lines 9 through 15. Starting with sub-section (f), lines 16 - 25, (1) - (7), is listed which funds in the regional business development funds may be utilized by the regional foundation.

Jeff Conway addressed the Committee saying that his agency did hear the concerns about the expenditures and the direction of the regional foundation and they decided to take up the approach of tightening up the rules and regulations. He called attention to the copies of 110-13-4. Regional business development funds; eligible projects being distributed. (Attachment 2).

The hearing on **SB 489** was closed.

CONTINUATION SHEET

MINUTES OF THE House Economic Development and Tourism Committee at 3:30 P.M. on March 11, 2008 in Room 519-S of the Capitol.

Carole Jordan distributed a “visual” of the conceptual structure of a rural development mode. (Attachment 3.)

She also provided maps of the locations of regional foundations as well as the finance programs currently available to each region (Attachment 3-9) and of Kansas Enterprise Facilitation Communities. (Attachment 3-10).

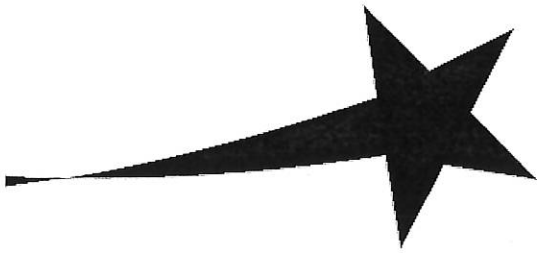
Questions and answers followed.

The meeting was adjourned at 4:40 pm. The next meeting is scheduled for Wednesday, March 12, 2008.



KANSAS
DEPARTMENT OF COMMERCE

David D. Kerr, Secretary



Kansas Film Commission Briefing

The House Economic Development and Tourism Committee

March 11, 2008

For more information on this topic contact:
Peter Jasso, Kansas Film Commission Manager
Phone: (785) 296-2178
Fax: (785) 296-3490
pjasso@kansascommerce.com

www.kansascommerce.com

Economic Development & Tourism
Date: 3-11-08
Attachment # 1-1

Briefing on the Kansas Film Commission
to
The House Economic Development and Tourism Committee

by Peter Jasso, Manager
Kansas Film Commission
Kansas Department of Commerce

Mar. 11, 2008

Madam Chairperson and Members of the Joint Committee:

Thank you for the opportunity to speak to you today. My name is Peter Jasso and I am the Manager of the Kansas Film Commission.

The Kansas Film Commission is a program in the Kansas Department of Commerce's Business Development Division created to encourage and service film and video production in the state of Kansas. The Commission is currently comprised of one full time employee with an operational budget of \$100,000 and an advisory board. Attached is a current roster of newly appointed board members.

The purpose of the Kansas Film Commission is to serve as a liaison between prospective filmmakers and the state of Kansas, as well as encourage and support the local film industry. The Commission is the first point of contact for any production looking for contacts, resources, direction, and advice. The Kansas Film Commission assists companies with a wide variety of production issues, including locations, facilities, governmental assistance, personnel, and support services and works closely with community contacts in all branches of state and local government to make filming in Kansas more efficient. The Commission also sponsors several events throughout the year, including local film festivals, produces a weekly e-newsletter featuring information on local film related events and projects, and hosts the annual Kansas Film Industry Summit. The Kansas Film Commission has provided assistance to several productions including independent features (*The Only Good Indian*, *Hope*, *Bunker Hill*), cable television shows (*BBC*, *History Channel*, *Irish TV*, *PBS*, *Discovery Channel*, *Sundance Channel*) commercials (*US Army Promo*), shorts/music videos (*Craig Morgan*, *Dave Parks*, *SenoReality shorts*), and IMAX films (*Proud American*).

During FY '07, film production dollars spent in the state totaled an estimated \$28 million. Revenue totals are computed from sales and withholding tax figures under the following code headings: 512110 Motion Picture and Video Production; 512199 Other Motion Picture and Video Industries; 512240 Sound Recording Studios; and 711510 Independent Artists, Writers, and Performers. Since 1985, a total of \$326,033,707 in production dollars has been spent in Kansas.

In 2007, the legislature adopted HB 2004. Sections 3-6 provide for a 30% non-refundable, non-transferable film production tax credit, which allows production companies to claim a tax credit equal to 30% of their total in-state expenditures for a particular project, capped at a total annual amount of \$2 million dollars. The Film Commission anticipates that 3 to 4 projects will have qualified for the tax credit in 2007. We also anticipate that two potential projects will qualify in 2008 so far.

Thank you for your time and the opportunity to address the committee.



KANSAS FILM COMMISSION MEMBERS

Harriet E. Caplan – 6/30/11
2003 Main
Hays, KS 67601
(785) 628-5596 (W)
(785) 628-2677 (H)
hcaplan@fhsu.edu

Jessica Davis Cole – 6/30/11
1200 E. 8th St.
Goodland, KS 67735
(785) 899-2132 (H)

Joel Feigenbaum - 6/30/10
11721 High Drive
Leawood, KS 66211
(913) 491-5075 (W/H)
jffeigen@aol.com

Cynthia Haines - 6/30/09
984 N. 1800 Rd.
Lawrence, KS 66049
(785) 865-1603 (H)
cfarahhaines@aol.com

John Holecek - 6/30/2010
711 E. Euclid St
McPherson, KS 67460
(620) 241-6139 (W)
(620) 241-6139 (H)
john.holecek@sbcglobal.net

Greg Hurd - 6/30/10
1520 Crescent Road
Lawrence, KS 66044
785-832-6372 (W)
785-842-2129 (H)
greghurd@sunflower.com

Jackie Johnson - 6/30/09
6131 Mission Dr.
Mission Hills, KS 66208
(913) 432-4229 (H)

Benjamin Meade - 6/30/2009
8606 Redbud Lane
Lenexa, KS 66220
(913)-345-8200 (W)
(913) 745-5905 (H)
bmeade@kcnet.com

Henry C. Menghini - 6/30/11
1207 E Quincy
Pittsburg, KS 66762
(620) 232-6519 (H)
(620) 231-6030 (W)
henrymenghini@mmmlc.kscoxmail.com

Barbara Nash - 6/30/10
452 S. Harrison
Olathe, KS 66062
(913) 782-0435(H)
(913) 782-5322 (FAX)
flybarbara1@yahoo.com

Jason Opat - 6/30/11
409 Pamela
Wichita, KS 67212
(316) 425-8333 (W)
(316) 729-7493 (H)
jason@ruleproductions.com

Scott Richardson – 06/30/09
4121 W. 13th St.
Lawrence, KS 66049
(785) 842-5940 (H)
(785) 842-6628 (W)
scottrichardson@sunflower.com

Kevin Willmott – 6/30/10
2716 Bluestem Ct.
Lawrence, KS 66047
(785) 864-1350 (W)
willmott@ku.edu

LEGISLATIVE MEMBERS:

Senator Terry Bruce
401 E. Sherman
Hutchinson, KS
(620) 663-7131 (W)
(620) 662-6930 (H)
lawfirm@ourtownusa.net

Senator Chris Steineger
51 South 64th Street
Kansas City, KS 66111
(913) 287-7636
(913) 287-6879
steineger@senate.state.ks.us

Representative Terrie Huntington
3216 W. 68th Street
Mission Hills, KS 66208
(913) 677-3582 (H)
(913) 677-3582 (C)
twebbh1024@aol.com

Representative Annie Kuether
1346 SW Wayne Ave
Topeka, KS 66604
(785) 232-0717
kuet@aol.com

EX-OFFICIO MEMBERS:

Deborah Miller, Secretary
Steve Schwartz, Representing
Department of Transportation
Docking State Office Building
700 Harrison
Topeka, KS 66612
(785) 296-3585
(785) 296-0287 (FAX)
sschwartz@ksdot.org

Roderick L. Bremby, Secretary
Bridgett Mitchell, Representing
Department of Health & Environment
1000 S.W. Jackson, Suite 540
Topeka, KS 66613
(785) 296-0461
(785) 296-6368 (FAX)
bmitchell@kdhe.state.ks.us

Bobbie Athon
State Historical Society
6425 S.W. 6th Ave.
Topeka, KS 66615-1099
(785) 272-8681 (W)
(785) 272-8682 (F)
bathon@kshs.org

David Kerr, Secretary
Department of Commerce
1000 S.W. Jackson, Suite 100
Topeka, KS 66612
(785) 296-2741
(785) 296-5055 (FAX)
dkerr@kansascommerce.com

Mike Hayden, Secretary
Shari Wilson, Representing
Department of Wildlife and Parks
51 South 64th Street
Kansas City, KS 66111-2002
(913) 287-6879
sharilea@kc.rr.com

Llewellyn Crain, Executive Director
Kansas Arts Commission
700 SW Jackson, Suite 1004
Topeka, KS 66603
(785) 296-3335
(785) 296-4989
lcrain@arts.ks.gov

BUSINESS DEVELOPMENT DIVISION

1000 S.W. Jackson, Suite 100
Topeka, KS 66612-1354
(888) 701-FILM
(785) 296-2178
(785) 296-3490 (FAX)

Peter Jasso
Director, Kansas Film Commission
pjasso@kansascommerce.com

110-13-4. Regional business development funds; eligible projects. (a) Each regional foundation shall administer a regional business development fund.

(b) The sums generated by contributions to each regional business development fund shall be allocated according to the following provisions:

(1) No less than ~~60~~ 75 percent may be allocated for job creation or retention.

(2) A maximum of 10 percent may be allocated towards the administrative cost of overseeing the project.

(3) The remaining funds may be allocated towards other eligible activities in a manner that fits the region's priorities and needs.

(4) Funds shall not be used to pay for services, studies, or other items that are available from existing sources.

(c) Contributions to the fund shall be utilized by the regional foundation for one or more of the following projects:

- (1) Business start-ups;
- (2) business expansion;
- (3) business retention;
- (4) business support services;
- (5) regional leadership development;
- (6) technology improvements; and
- (7) administrative services.

(d) All interest generated on idle funds administered for this program by the regional foundation shall be used by the regional foundation's board in a manner not inconsistent with this regulation.

DEPT. OF ADMINISTRATION

Economic Development & Tourism

Date: 3-11-08

Attachment # 2-1

(e) Any regional foundation may exceed the maximum percentages allowed for one or more eligible projects with the prior approval of the secretary. (Authorized by K.S.A. ~~2004~~ 2007 Supp. 74-5002r; implementing K.S.A. 2007 Supp. 74-5005, as amended by ~~L. 2005~~, ch. 104, sec. 9, and K.S.A. 74-5007a; effective Aug. 12, 2005; amended May 5, 2006; amended P-_____.)

DEPT. OF ADMINISTRATION

FEB 07 2008

APPROVED BY FDL

FDL

K.A.R. 110-13-11. Approval of non-cash contributions. (a) (1) Before awarding a tax credit for any non-cash contribution, as referenced in K.S.A. 74-50,154(a)(1) and amendments thereto, each regional foundation shall submit to the secretary the following information about the proposed contribution:

(A) A detailed physical description of the item to be contributed;

(B) the proposed value of the contribution;

(C) the item's fair market value; and

(D) the amount of the proposed tax credit.

(2) A determination of the eligibility for tax credits of the item specified in paragraph (a)(1) and the amount of tax credits to be allowed under the act shall be made by the secretary.

(b) The determination specified in paragraph (a)(2) shall be provided by the secretary to the regional foundation within 15 business days of the secretary's receipt of the information specified in paragraph (a)(1). (Authorized by and implementing K.S.A. 2007 Supp. 74-50,154; effective P-_____.)

DEPT. OF ADMINISTRATION

FEB 07 2008

APPROVED BY FDL

23

Dated: January 8, 2008

**RURAL BUSINESS DEVELOPMENT TAX CREDIT PROGRAM
AGREEMENT NO. 2008-RBDTC-6**

between the

KANSAS DEPARTMENT OF COMMERCE

and

SOUTH CENTRAL KANSAS ECONOMIC DEVELOPMENT DISTRICT

WHEREAS, New Section 70 of Chapter 112 of the 2004 Session Laws of Kansas authorizes the Kansas Department of Commerce (hereinafter referred to as "Commerce") to administer the Rural Business Development Tax Credit Program; and

WHEREAS, the Kansas Department of Commerce has reviewed and approved the proposal of the South Central Kansas Economic Development District (hereinafter referred to as "Regional Foundation") and allocates tax credits for the purpose of the Regional Foundation's projects; and

WHEREAS, the Regional Foundation desires to become, or to form, a regional foundation for the South Central economic development region of Kansas under the Rural Business Development Tax Credit Program; and

WHEREAS, Commerce and the Regional Foundation are parties to this Agreement;

NOW, THEREFORE BE IT AGREED BETWEEN THE PARTIES HERETO:

- I. DEFINITIONS.** In this agreement, the following terms shall have the following meanings:
- (a) "Department" means the Kansas Department of Commerce or "Commerce.
 - (b) "Contributor" means anyone contributing to the programs or projects of the regional foundation.
 - (c) "Guidelines" means the Rural Business Development Tax Credit Program Guidelines.
 - (d) "Program" means the Rural Business Development Tax Credit Program.
 - (e) "Project" means the program project defined in the Regional Foundation's proposal that was approved by the Department.
 - (f) "Region" shall mean the South Central economic development region of Kansas, as set forth in the applicable Kansas Administrative Regulation.
 - (g) "Regional Foundation" or "Foundation" shall mean South Central Kansas Economic Development District, a duly authorized nonprofit Kansas-incorporated

24

business entity that meets the statutory requirements of a foundation under New Section 70 of Chapter 112 of the 2004 Session Laws of Kansas.

- (h) "Secretary" means the Secretary of Commerce.
- (i) "Tax Credits" means Program Tax Credits authorized by law.
- (j) "Taxpayer" means a contributor to a program or project who also qualifies for tax credits under the program and New Section 70 of Chapter 112 of the 2004 Session Laws of Kansas.
- (k) "RBDTC" means Rural Business Development Tax Credits.

II. **CONTINUED APPROPRIATIONS.** The parties agree that the allocation and use of tax credits under this program is dependent on continued annual program administration and funding by the Kansas Legislature. The parties agree that absent continued funding by the legislature, the program shall cease at the end of the last fully funded fiscal year.

III. **ALLOCATION OF TAX CREDITS.** The Department shall allocate tax credits to the Foundation in the following amount:

SFY 2008	\$285,714
----------	-----------

IV. **CONTRIBUTIONS TO REGIONAL FOUNDATION.** The parties agree that the Regional Foundation shall seek contributions to its services and projects from contributors in the required amount in order to be eligible to receive tax credits:

SFY 2008	\$380,952
----------	-----------

The Regional Foundation must assist all rural communities (as defined in the Guidelines) located within all counties in their region and use such contributions to further their program projects.

V. **ACCEPTABLE USE.** The parties agree that the Department reserves the exclusive right to determine what constitutes an acceptable contribution and how that contribution must be documented in order to warrant a tax credit.

VI. **PROJECT FUNDING.** Projects are to be funded as outlined in the approved budget and Regional Foundation proposal approved by the Department. Any modifications in the tax credit allocation, project budget, proposal, or related documents are hereby incorporated into this agreement by reference, and made a part hereof, as if fully set forth herein.

VII. **USE OF FUNDS.** The Department, in its sole discretion, may determine the eligibility of the use of funds based on the Guidelines, New Section 70 of Chapter 112 of the 2004 Session Laws of Kansas, and as set forth in the applicable Kansas Administrative Regulation. Regional Foundations should avoid using funds for services which are duplicative of other services reasonably available from existing sources.

- VIII. IDLE FUNDS.** Idle funds in the approved projects of the foundation may be placed in an interest-bearing account. Interest generated on idle funds for this program shall be used in a manner consistent with program guidelines. Any disagreement as to whether interest is being used according to program guidelines shall be determined by the Secretary. The Regional Foundation shall keep a single account for the deposit of program interest, receipts, contributions and any other receipts including consulting fees. The account shall be in a bank or financial institution located in Kansas and that is insured by the Federal Deposit Insurance Corporation (FDIC). Such account shall not be commingled with any other source of funds. Further, the Regional Foundation shall maintain separate books for the operation of the Regional Foundation and shall not commingle funds in any way. The Regional Foundation shall prepare a tax credit application on forms approved by the Department and forward such application to the Department within 14 calendar days of the deposit in such financial institution. Such applications shall include support documentation, adequate to the Secretary, as defined in the program guidelines.
- IX. SFY 2008 PERFORMANCE PERIOD.** The performance period for the utilization of SFY 2008 tax credits shall be July 1, 2007 through December 31, 2008. The Regional Foundation may not solicit tax credit contributions nor shall applications be processed for tax credit eligibility before or after this performance period.
- X. REALLOCATION OF CREDITS.** If the Secretary determines that the tax credits are not being utilized in a manner sufficient to fully support the approved proposals submitted under the Guidelines, New Section 70 of Chapter 112 of the 2004 Session Laws of Kansas, and applicable Kansas Administrative Regulation, such credits shall be reclaimed from the Regional Foundation by the Secretary and be redistributed to other Regional Foundations that have utilized all tax credits previously issued to such region. On or before the first Monday of the 11th month after the date of tax credit allocation, the Secretary shall send written notice to the Regional Foundation. The notice shall state what portion of the tax credits will be reclaimed and reallocated by the Secretary, an explanation for the action, a date by which the Regional Foundation must respond, and notice of the appeal procedure. The Secretary may request a proposed utilization schedule from the Regional Foundation. The Regional Foundation must follow the appeal procedure specified in the Guidelines and applicable Kansas Administrative Regulation.
- XI. NOTIFICATION.** No Regional Foundation shall use or encumber any reallocation of tax credits until formally notified in writing by the Secretary.
- XII. FINANCIAL MANAGEMENT.** The Regional Foundation shall establish and maintain an accounting system that ensures effective control over and accountability for all funds and matching funds generated through tax credit contributions. A separate fund within the accounting system shall be established for the tracking of all funds and matching funds generated through tax credit contributions.

- XIII. BUDGET AMENDMENTS.** The Regional Foundation may make budget amendments to the project if the scope of work for the project remains the same. Budget amendments exceeding ten (10) percent in the aggregate of the organization's total project budget shall require the prior written approval of the Regional Foundation Board of Directors and the Secretary.
- XIV. QUARTERLY PROGRESS REPORTS.** The Regional Foundation shall submit quarterly progress reports to the Department on or before January 10 (for quarter ending December 31), April 10 (for quarter ending March 31), July 10 (for quarter ending June 30), and October 10 (for quarter ending September 30) of each calendar year in which the tax credits and funds generated through such contributions for tax credits are being utilized by the Regional Foundation. *Quarterly progress reports shall be due even if no tax credits or funds generated through such contributions for tax credits are being utilized in that quarter.*
- XV. LATENESS OF QUARTERLY PROGRESS REPORTS.** If the Regional Foundation does not submit quarterly progress reports by the specified due dates, it shall not be able to take in additional contributions from taxpayers relevant to tax credits or submit tax credit applications to be reviewed and processed by the Department until such quarterly progress reports are provided to the Department.
- XVI. ANNUAL AUDIT & PERFORMANCE REPORTS.** The Regional Foundation shall have an annual compliance audit performed by an independent CPA licensed to practice in Kansas for funds generated by contributions that result in the award of tax credits by the Regional Foundation. The audit must adhere to the Department RBDTC Audit Guidelines. A performance report will be completed by the Regional Foundation outlining the impact of the tax credits. The audit and performance report shall be submitted on or before February 28 of each calendar year.
- XVII. CONTRACTUAL PROVISIONS ATTACHMENT.** The Regional Foundation shall comply with the terms of Kansas Department of Administration Form DA -146A (Contractual Provisions Attachment).
- XVIII. PUBLIC COMMUNICATIONS.** All forms of public communication or signage concerning any projects that produce or support entrepreneurial activities within the region that utilize funds generated by contributions to the Regional Foundation for program purposes shall state the following: **“Funded in part through Rural Business Development Tax Credits, administered by the Kansas Department of Commerce.”**
- XIX. BOARD OF DIRECTOR RESPONSIBILITIES.** The Regional Foundation's Board of Directors shall oversee funds generated through contributions in the following manner, as specified in the Guidelines and applicable Kansas Administrative Regulation:
- (a) Create policies to determine the circumstances under which contributors may qualify for tax credits;
 - (b) Oversee the processing of applications for tax credits;

- (c) Process applications for the use of funds generated through tax credit contributions (regional funds);
- (d) Approve or deny applications for the use of funds through an investment committee;
- (e) Review and advise the Regional Foundation on management and investment of funds;
- (f) Create a mechanism for providing business support services relating to business finance services offered by the Regional Foundation;
- (g) Provide quarterly and annual financial and performance reporting to Commerce;
- (h) Audit funds generated through tax credit contributions and provide audit reports to Commerce.

XX. TERMS OF CONTRIBUTIONS. Until such time as the Department determines a taxpayer's contribution is eligible for tax credits under this agreement, the Regional Foundation shall not communicate to anyone that such contribution is, or will be eligible as, a tax credit. The Secretary shall review all non-cash contributions prior to the Regional Foundation transferring or awarding a tax credit to a taxpayer. The words "Sell", "Sales", "Selling", "Sold", "Purchases", "Purchasing", or any derivative term or terms when referencing the process of the acquiring of tax credits for contributions shall not appear in any oral or written communication of any kind regarding such tax credits.

XXI. USE OF CONTRIBUTIONS. Regional Foundations may use any contributions received from contributors whether or not such contributions are eligible for tax credits. However, all such contributions must be used for approved projects, as specified in the Regional Foundation's proposal, as approved by the Department.

XXII. PARENT ENTITY REPRESENTATION ON BOARD OF DIRECTORS. No more than twenty-five percent (25%) of the members of the Board of Directors of the parent entity of the Regional Foundation may serve at any one time on the Regional Foundation's Board of Directors.

XXIII. The Regional Foundation shall, no later than January 10 of each calendar year, remit or transfer to the Department an amount equal to five percent (5%) of funds raised in the previous fiscal year for the marketing of tax credits under this Agreement.

XXIV. SUCCESSOR INTERESTS. In the event the Secretary, upon good authority, revokes Regional Foundation status of the entity, the Secretary shall publish promptly such revocation notice in the Kansas Register and appoint a successor Regional Foundation. Such Regional Foundation shall comply with the Guidelines and applicable Kansas Administrative Regulations. Upon such appointment, all rights, duties and obligations of the original Regional Foundation shall evolve on the newly appointed Regional Foundation.

If necessary, such newly appointed entity shall file immediately to achieve the statutory status required of any of the alternative forms delineated in Section 70 of Chapter 112 of

28

the 2004 Session Laws of Kansas, and amendments thereto, and organize itself to carry out the obligations under these regulations.

XXV. RETENTION OF RECORDS. The Regional Foundation shall retain all records pertaining to the Regional Foundation's projects for a period of three (3) years after the Regional Foundation has ceased to exist, fully utilized all tax credits and funds generated through such tax credits, or has decided to terminate this agreement and return all monies on hand generated through tax credit contributions to the Department.

XXVI. INDEMNIFICATION. The Regional Foundation agrees to indemnify, defend and hold harmless the State of Kansas and its officers and employees from any liabilities, claims, suits, judgments, and damages arising as a result of the performance of the obligations under this agreement, or any document mentioned in this agreement, whether incorporated by reference or not, including subsequent amendments thereto, if such liability arose after official notification from the Department that such Regional Foundation was selected for the region, and during the viability of the program.

XXVII. The parties acknowledge this agreement is subject to all applicable statutes, rules and regulations, as well as any amendments to such statutes, rules and regulations, which became effective during the term of the agreement.

XXVIII. SIGNATURES. We, the undersigned, have read and understood the above document, agree that we have submitted, or we have had an opportunity to submit, such document for independent legal advice, and hereby agree to the terms and conditions contained herein:

KANSAS DEPARTMENT OF COMMERCE

By: _____ Date: _____
(Secretary of Commerce)

ATTEST: _____ Date: _____
(Department General Counsel)

(Notary Seal for the Department)

SOUTH CENTRAL KANSAS ECONOMIC DEVELOPMENT DISTRICT

By: _____ Date: _____

Title: _____

ATTEST: _____ Date: _____
(Legal Representative for Regional Foundation)

(Notary Seal for Regional Foundation)

CONTRACTUAL PROVISIONS ATTACHMENT

Important: This form contains mandatory contract provisions and must be attached to or incorporated in all copies of any contractual agreement. If it is attached to the vendor/contractor's standard contract form, then that form must be altered to contain the following provision:

"The Provisions found in Contractual Provisions Attachment (Form DA-146a, Rev. 1-01), which is attached hereto, are hereby incorporated in this contract and made a part thereof."

The parties agree that the following provisions are hereby incorporated into the contract to which it is attached and made a part thereof, said contract being the _____ day of _____, 20_____.

1. **Terms Herein Controlling Provisions:** It is expressly agreed that the terms of each and every provision in this attachment shall prevail and control over the terms of any other conflicting provision in any other document relating to and a part of the contract in which this attachment is incorporated.
2. **Agreement With Kansas Law:** All contractual agreements shall be subject to, governed by, and construed according to the laws of the State of Kansas.
3. **Termination Due To Lack Of Funding Appropriation:** If, in the judgment of the Director of Accounts and Reports, Department of Administration, sufficient funds are not appropriated to continue the function performed in this agreement and for the payment of the charges hereunder, State may terminate this agreement at the end of its current fiscal year. State agrees to give written notice of termination to contractor at least 30 days prior to the end of its current fiscal year, and shall give such notice for a greater period prior to the end of such fiscal year as may be provided in this contract, except that such notice shall not be required prior to 90 days before the end of such fiscal year. Contractor shall have the right, at the end of such fiscal year, to take possession of any equipment provided State under the contract. State will pay to the contractor all regular contractual payments incurred through the end of such fiscal year, plus contractual charges incidental to the return of any such equipment. Upon termination of the agreement by State, title to any such equipment shall revert to contractor at the end of State's current fiscal year. The termination of the contract pursuant to this paragraph shall not cause any penalty to be charged to the agency or the contractor.
4. **Disclaimer Of Liability:** Neither the State of Kansas nor any agency thereof shall hold harmless or indemnify any contractor beyond that liability incurred under the Kansas Tort Claims Act (K.S.A. 75-6101 et seq.).
5. **Anti-Discrimination Clause:** The contractor agrees: (a) to comply with the Kansas Act Against Discrimination (K.S.A. 44-1001 et seq.) and the Kansas Age Discrimination in Employment Act (K.S.A. 44-1111 et seq.) and the applicable provisions of the Americans With Disabilities Act (42 U.S.C. 12101 et seq.) (ADA) and to not discriminate against any person because of race, religion, color, sex, disability, national origin or ancestry, or age in the admission or access to, or treatment or employment in, its programs or activities; (b) to include in all solicitations or advertisements for employees, the phrase "equal opportunity employer"; (c) to comply with the reporting requirements set out at K.S.A. 44-1031 and K.S.A. 44-1116; (d) to include those provisions in every subcontract or purchase order so that they are binding upon such subcontractor or vendor; (e) that a failure to comply with the reporting requirements of (c) above or if the contractor is found guilty of any violation of such acts by the Kansas Human Rights Commission, such violation shall constitute a breach of contract and the contract may be cancelled, terminated or suspended, in whole or in part, by the contracting state agency or the Kansas Department of Administration; (f) if it is determined that the contractor has violated applicable provisions of ADA, such violation shall constitute a breach of contract and the contract may be cancelled, terminated or suspended, in whole or in part, by the contracting state agency or the Kansas Department of Administration.

Parties to this contract understand that the provisions of this paragraph number 5 (with the exception of those provisions relating to the ADA) are not applicable to a contractor who employs fewer than four employees during the term of such contract or whose contracts with the contracting state agency cumulatively total \$5,000 or less during the fiscal year of such agency.
6. **Acceptance Of Contract:** This contract shall not be considered accepted, approved or otherwise effective until the statutorily required approvals and certifications have been given.
7. **Arbitration, Damages, Warranties:** Notwithstanding any language to the contrary, no interpretation shall be allowed to find the State or any agency thereof has agreed to binding arbitration, or the payment of damages or penalties upon the occurrence of a contingency. Further, the State of Kansas shall not agree to pay attorney fees and late payment charges beyond those available under the Kansas Prompt Payment Act (K.S.A. 75-6403), and no provision will be given effect which attempts to exclude, modify, disclaim or otherwise attempt to limit implied warranties of merchantability and fitness for a particular purpose.
8. **Representative's Authority To Contract:** By signing this contract, the representative of the contractor thereby represents that such person is duly authorized by the contractor to execute this contract on behalf of the contractor and that the contractor agrees to be bound by the provisions thereof.
9. **Responsibility For Taxes:** The State of Kansas shall not be responsible for, nor indemnify a contractor for, any federal, state or local taxes which may be imposed or levied upon the subject matter of this contract.
10. **Insurance:** The State of Kansas shall not be required to purchase, any insurance against loss or damage to any personal property to which this contract relates, nor shall this contract require the State to establish a "self-insurance" fund to protect against any such loss of damage. Subject to the provisions of the Kansas Tort Claims Act (K.S.A. 75-6101 et seq.), the vendor or lessor shall bear the risk of any loss or damage to any personal property in which vendor or lessor holds title.
11. **Information:** No provision of this contract shall be construed as limiting the Legislative Division of Post Audit from having access to information pursuant to K.S.A. 46-1101 et seq.
12. **The Eleventh Amendment:** "The Eleventh Amendment is an inherent and incumbent protection with the State of Kansas and need not be reserved, but prudence requires the State to reiterate that nothing related to this contract shall be deemed a waiver of the Eleventh Amendment."

***Enhancing the Structure of
Rural Development in Kansas***

Prepared by:



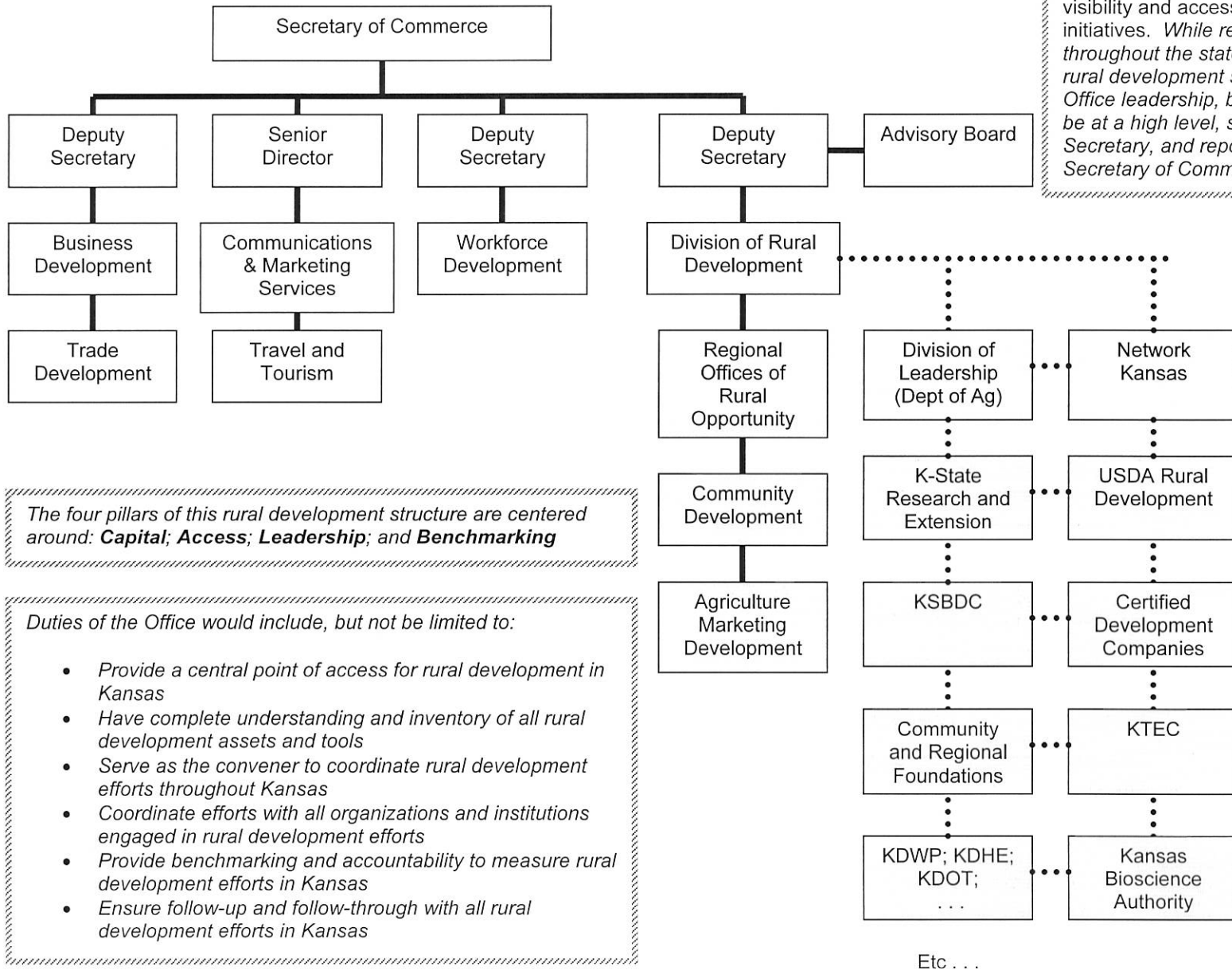
January 2008

Economic Development & Tourism

Date: 3-11-08

Attachment # 3-1

Figure 1. Conceptual Structure of Rural Development Model



The Office of Rural Opportunity would be positioned at the highest possible level to denote the prominence of the Office as the centerpiece of Kansas' rural development structure. This would help facilitate visibility and access to rural development initiatives. *While regional outreach throughout the state will be critical to the rural development structure and efforts, Office leadership, based in Topeka, should be at a high level, such as Deputy Secretary, and report directly to the Secretary of Commerce.*

The four pillars of this rural development structure are centered around: **Capital; Access; Leadership; and Benchmarking**

- Duties of the Office would include, but not be limited to:
- Provide a central point of access for rural development in Kansas
 - Have complete understanding and inventory of all rural development assets and tools
 - Serve as the convener to coordinate rural development efforts throughout Kansas
 - Coordinate efforts with all organizations and institutions engaged in rural development efforts
 - Provide benchmarking and accountability to measure rural development efforts in Kansas
 - Ensure follow-up and follow-through with all rural development efforts in Kansas

Etc . . .

Enhancing the Structure of Rural Development in Kansas

Executive Summary

Mission – Enhance the prosperity of rural Kansas by developing innovative solutions recognizing local and regional strengths to ensure the quality of life in rural areas.

Strategy 6 – Create a rural development model that provides a holistic, integrated approach based on four key pillars (capital, access, leadership, and benchmarking). The model should use incentives as the engine that drives integration.

- 6-1 The Office of Rural Opportunity should be restructured and positioned at the highest possible level to become the centerpiece of a new integrated rural development structure. The Office will be recognized as the lead agency for rural development in Kansas with a mission to provide an integrated, coordinated and seamless approach for all rural development initiatives. The Office will develop a transparent, clearly understood methodology built around incentives to drive integration of the key pillars (capital, access, leadership, and benchmarking). Enhanced funding should be provided in the state budget for the administrative requirements of the Office.
- 6-2 Create a Division of Leadership within the Kansas Department of Agriculture, as capacity building or leadership must be a key component of rural development. Funding should be provided in the state budget for the administrative requirements of the Division.
- 6-3 Develop a coordinated incentive structure to reward communities, businesses and individuals for using the new integrated structure. The Office of Rural Opportunity would develop the framework surrounding the incentive structure.
- 6-4 Benchmark our efforts and progress in rural Kansas. Through marketing and awareness, rural areas will increase the visibility of successes and increase the awareness of their business atmosphere and lifestyle.
- 6-5 Enhance funding to \$1.0 million per year for the agricultural loan portfolio within the Department of Commerce.
- 6-6 Utilize and support the potential of Rural Opportunity Zones to play a key role in incentives that would help communities invest in their own future with the state as a partner.

Introduction

Rural development is not a one size fits all solution – some areas are going to be successful and some are not. The attitude and actions of the community members will determine their success – We cannot legislate this.

- Statewide Cell members, 2007 Strategic Planning process

Entrepreneurship is the new focal point for rural development. For much of the past half century, rural development has been driven by twin incentives aimed at business recruitment and retention. This strategy is no longer working so well, however, for one simple reason – globalization.¹

Farmers and ranchers generate revenues of nearly \$10 billion per year from grain production and livestock operations. While this is substantial, as the Kansas economy grows, the portion of gross domestic product by state attributed to agriculture continues to decline in percentage. In rural counties with little other industry, agriculture remains the primary generator of economic activity. The total impact of agriculture on the state's economy depends upon how one defines it. If the term agribusiness is used, encompassing the entire range of related food and fiber industries using input supply, agricultural

¹ Mark Drabenstott, Center for the Study of Rural America, Federal Reserve Bank of Kansas City.

production, commodity processing, food manufacturing and food distribution, the impact of agriculture on the Kansas economy gains in importance to as much as 20 percent of the state's total annual economy.²

Over time, the agriculture industry has continued to see increased productivity through the application of new technologies and innovative solutions. Increased productivity has contributed to the out-migration of actual producers, and while there are now fewer producers, the value of farm production has continued to trend upwards. During the past 40 years, the number of farms in Kansas has declined from approximately 95,000 to 64,000. This phenomenon is not specific to Kansas only, it is occurring on a national level. The depopulation of the agriculture sector will continue and to suggest otherwise may be counter to the economic realities faced in this sector.

It is unlikely that we will repopulate and grow rural Kansas with the agriculture industry, and state-level efforts must be focused on rural development to help rebuild rural Kansas. Even with these efforts, we will not save every community. Rural areas will continue to deal with a variety of issues, such as capital, access, leadership, workforce shortages, out-migration, and available services and jobs; however, rural areas do have several opportunities in regards to quality of life, community partnerships, and wealth transfer potential. We must focus our efforts on rural development and entrepreneurship to assist rural areas.

Current Structure

Several government agencies and other entities have a role in rural development efforts – the problem is there are numerous slices in many places with little or no connectivity throughout the state. Some of these entities include:

- Kansas Department of Commerce (Division of Agriculture Marketing)
- Kansas Department of Agriculture (primarily regulatory)
- USDA Rural Development
- Network Kansas
- Kansas Small Business Development Center
- Kansas Certified Development Companies
- Community and Regional Foundations
- Kansas Department of Wildlife and Parks
- Kansas Department of Health and Environment
- Kansas Department of Transportation
- Office of Rural Opportunity
- Kansas State University/County Extension
- Local Government

Strategy and Recommendations

Create a rural development model that provides a holistic, integrated approach based on four key pillars (capital, access, leadership, and benchmarking). The model should use incentives as the engine that drives integration.

Since moving the Agricultural Marketing Division from the Department of Agriculture to the Department of Commerce (Commerce) in the mid-1990's, Kansas has tried several innovative means to enhance both agriculture and rural economies. The basic concept behind the move was designed to capture the inherent strengths and synergies housed at Commerce. This arrangement has worked fairly well at times, and at times the coordination or leveraging effect has not been outwardly visible. Since the move, both the Legislature and ensuing Administrations have worked to identify and provide new initiatives

² Mintert, James, Woolverton, Michael, Kastens, Terry, and John Leatherman. *Agriculture Commodities Future: Assess Competitive Threats to the Kansas Economy*, Department of Agricultural Economics, Kansas State University for Kansas, Inc., January 2006.

addressing rural development issues. This strategy outlines a rural development model based on capital, access, leadership and benchmarking, using incentives as the engine that drives integration to address rural development issues in Kansas.

The Office of Rural Opportunity should be restructured and positioned at the highest possible level to become the centerpiece of a new integrated rural development structure. The Office will be recognized as the lead agency for rural development in Kansas with a mission to provide an integrated, coordinated and seamless approach for all rural development initiatives. The Office will develop a transparent, clearly understood methodology built around incentives to drive integration of the key pillars (capital, access, leadership, and benchmarking). Enhanced funding should be provided in the state budget for the administrative requirements of the Office.

The Office of Rural Opportunity would be positioned at the highest possible level to denote the prominence of the Office as the centerpiece of Kansas' rural development structure. This would help facilitate visibility and access to rural development initiatives. While regional outreach throughout the state will be critical to the rural development structure and efforts, Office leadership, based in Topeka, should be at a high level, such as Deputy Secretary, and report directly to the Secretary of Commerce.

The Office would provide field staff to rural communities, cities, businesses or individuals for the purpose of more efficient and streamlined accessibility to state initiatives, such as community development, business development, housing and capacity building. Field staff would become experts with programs at all levels, including federal programs. The Office would provide continued communication during the start-up and maintenance phase of programs to sustain the communities, cities, businesses or individual momentum and activities. There would be at least one field representative for each of Commerce's seven business development regions.

While certain programs, grants and initiatives would not fall directly under the Office of Rural Opportunity's authority, its charge would be to develop a seamless structure that encourages and demands collaboration between all associated agencies and organizations. They would devise the means and methods for navigating through all rural development opportunities. The Office of Rural Opportunity would be responsible for both follow-up and follow-through on all subsequent rural development initiatives.

Duties of the Office would include, but not be limited to:

- Provide a central point of access for rural development in Kansas
- Have complete understanding and inventory of all rural development assets and tools
- Serve as the convener to coordinate rural development efforts throughout Kansas
- Coordinate efforts with all organizations and institutions engaged in rural development efforts
- Provide benchmarking and accountability to measure rural development efforts in Kansas
- Ensure follow-up and follow-through with all rural development efforts in Kansas

Create a Division of Leadership within the Kansas Department of Agriculture, as capacity building or leadership must be a key component of rural development. Funding should be provided in the state budget for the administrative requirements of the Division.

Any rural development structure that does not address the leadership component is destined to fail.

The Department of Agriculture must also have an inherent role in rural development efforts in Kansas. The Division of Leadership³ would provide that role. Its mission would be to identify and understand the necessary components of capacity building for local, regional, and state rural development efforts. While it would have the capacity to provide some training, in most cases it would not directly provide training,

³ The Georgia Academy for Economic Development is a similar initiative that assists the State of Georgia's leaders in their economic development efforts by providing an understanding of the critical processes, strategies and components involved in improving their local and regional economies and achieving economic success in today's global economy. accessed at: <http://www.georgiaacademy.org>

but rather it would provide assistance and develop a certified menu of training providers that meet their predetermined standards and the needs of communities and businesses looking to enhance their rural development opportunities. The menu of resources would include training such as Kansas Communities⁴, Hometown Competitiveness Training⁵, and others that could be recommended to regions, communities, cities, businesses or individuals. The Division would essentially facilitate interactions between the public and training entities to ensure the leadership and capacity building efforts were being delivered in an integrated, coordinated and seamless approach.

This part of rural development is currently absent in any structured manner at the state level. Currently, the Department of Agriculture has only a regulatory role in rural development in Kansas, and inherently this role could be expanded through the Division of Leadership, as the Department is a logical part of any rural development efforts in Kansas.

Develop a coordinated incentive structure to reward communities, businesses and individuals for using the new integrated structure. The Office of Rural Opportunity would develop the framework surrounding the incentive structure.

A coordinated incentive structure developed to capture thresholds and assist in setting priorities for state grants and loans would be a powerful reinforcement for federal grants and loans. For Kansas, during FY 2006, the USDA awarded approximately \$94 million in housing programs, \$9 million in business programs, and \$143 million in utilities programs.⁶ Given the potential federal funds available for rural development initiatives, any reinforcement from a state-level incentive structure could be beneficial to Kansas applicants. Kansas must become more competitive for federal dollars.

Potential examples within the coordinated incentive structure include: completing a dedicated leadership process or some other capacity building program certified through the leadership component of the Department of Agriculture; completing a designated process with a field representative from the Office of Rural Opportunity; creating a community foundation that has actively worked to capture local wealth transfer; utilizing Network Kansas to measure and benchmark progress; and utilizing Rural Opportunity Zones.

Ultimately, rural areas must be able to help themselves, and this incentive structure helps prioritize rural development efforts and gives rural areas access to the tools they need for revitalization.

Benchmark our efforts and progress in rural Kansas. Through marketing and awareness, rural areas will increase the visibility of successes and increase the awareness of their business atmosphere and lifestyle.

Measuring the results of rural development efforts will help communities learn about the local and regional impacts of their efforts. Benchmarks provide a means to tell their story – a way to increase the visibility of their successes and the awareness of their business atmosphere and lifestyle. Rural development efforts are a product of those communities, and how they define success in areas such as capacity building, leadership, resources, and overall results provide a direct measure of the type of community the residents want it to become. The Office of Rural Opportunity could devise both the means for navigating through rural development opportunities and design the benchmarks to assist communities in tracking their efforts.

⁴ Founded in 2004 to build and re-build community across Kansas by rebuilding the Public Square, one community at a time. The Public Square is the intersection of four sectors: business, education, health/human service and government. Accessed at: <http://www.kscomm.net>

⁵ HTC is a comprehensive approach to long-term rural community sustainability. This approach goes beyond the traditional tunnel vision of economic development. HTC helps the community to focus on four interrelated strategies that depend on each other for ultimate success – developing leadership; energizing entrepreneurs; engaging youth; and charitable giving. Accessed at: <http://www.htccommunity.org>

⁶ USDA Rural Development has an \$86 billion dollar portfolio of loans and they will administer nearly \$16 billion in program loans, loan guarantees and grants through their programs. Accessed at: <http://www.rurdev.usda.gov>

Network Kansas works to connect entrepreneurs with the expertise, education, and economic resources at the right time. Through their efforts, Network Kansas has several benchmarks for their initiatives, and the information from these initiatives could be a key part of benchmarking efforts set forth by the Office of Rural Opportunity.

Enhance funding to \$1.0 million per year for the agricultural loan portfolio within the Department of Commerce.

The agricultural value-added loan portfolio, administered by the Department of Commerce, Agriculture Marketing Division is currently funded at a level of approximately \$500,000 per year to assist agricultural producers and develop and expand agriculture in Kansas. Based on the direct and indirect contributions of Kansas agricultural producers and related agribusinesses, the overall economic impact of agriculture on the state's economy was approximately \$30.5 billion in 2003.⁷ While we can debate the overall financial impact of agriculture on the state, there is little doubt regarding its importance to the economy of Kansas. Therefore we recommend the agricultural loan portfolio be enhanced to \$1.0 million per year to provide further assistance with these efforts.

Utilize and support the potential of Rural Opportunity Zones to play a key role in incentives that would help communities invest in their own future with the state as a partner.

Rural Opportunity Zones would essentially provide tax incentives to businesses that create jobs in rural communities. The creation of Rural Opportunity Zones would accomplish two primary objectives: 1) The elimination of the previous Enterprise Zone Program; and 2) The creation of Opportunity Zone Tax Credits to provide incentives for job creation and capital investment in rural communities and counties.

Currently, small businesses in rural areas cannot access the High Performance Incentive Program (HPIP) tax incentives because they cannot create enough jobs or capital investment. This is a disincentive for the growth of existing businesses and the recruitment of new businesses to rural Kansas. There are many facets to the concept of Rural Opportunity Zones:

- Providing new tax incentives to communities and businesses to encourage investment in rural areas, instead of just providing incentives to larger communities and businesses.
- Establishing an application process and delivery methodology for the tax credits that allows communities, counties and regions to establish the boundaries of the Rural Opportunity Zones, rather than the prescriptive approach of the state establishing the boundaries.
- Tax incentives that reward businesses and communities who exercised leadership, planning, cooperation, collaboration, and potentially the coordination of services.
- Communities that clearly demonstrate deliberate and purposeful development planning efforts and actions would be eligible for the designation as a Rural Opportunity Zone. These zones could reinforce the need for benchmarking rural development efforts.

⁷ See Mintert, p. 2.



632 SW Van Buren, Suite 100
Topeka, KS 66603
(785) 296-1460
(785) 296-1463 (fax)
www.kansasinc.org
ksinc@ink.org

Regional Foundations

The Kansas Economic Growth Act of 2004 established regional foundations for the purpose of assisting rural areas in job creation/retention, business support services, regional leadership development, and technology improvements. Regional foundations provide equal access to their services in all counties within their designated economic development region.



The following regional foundations have received authorized tax credits to raise capital for rural economic development. Listed below are the 7 regional foundations by region.

FINANCE PROGRAMS CURRENTLY AVAILABLE

Southwest Region: Great Plains Development, Inc., 100 Military Street, Ste. 128, Dodge City, Kansas 67801. Phone: 620-227-6406.

South Central Region: South Central Kansas Economic Development District, 209 E. William, Ste. 300, Wichita, Kansas 67202, Phone: 316-262-7035. For more information, visit www.sckedd.org.

Southeast Region: Southeast Kansas, Inc., P.O. Box 175, Cherokee, Kansas 66724, Phone: 620-249-5606. For more information, visit www.sekinc.org.

Northeast Region: Glacial Hills Resource Conservation and Development Region Inc., Gary Satter, Program Coordinator, 318 Broadway, Valley Falls, Kansas 66088, Phone: 785-945-6292. For more information, visit www.glacialhillsrcd.com.

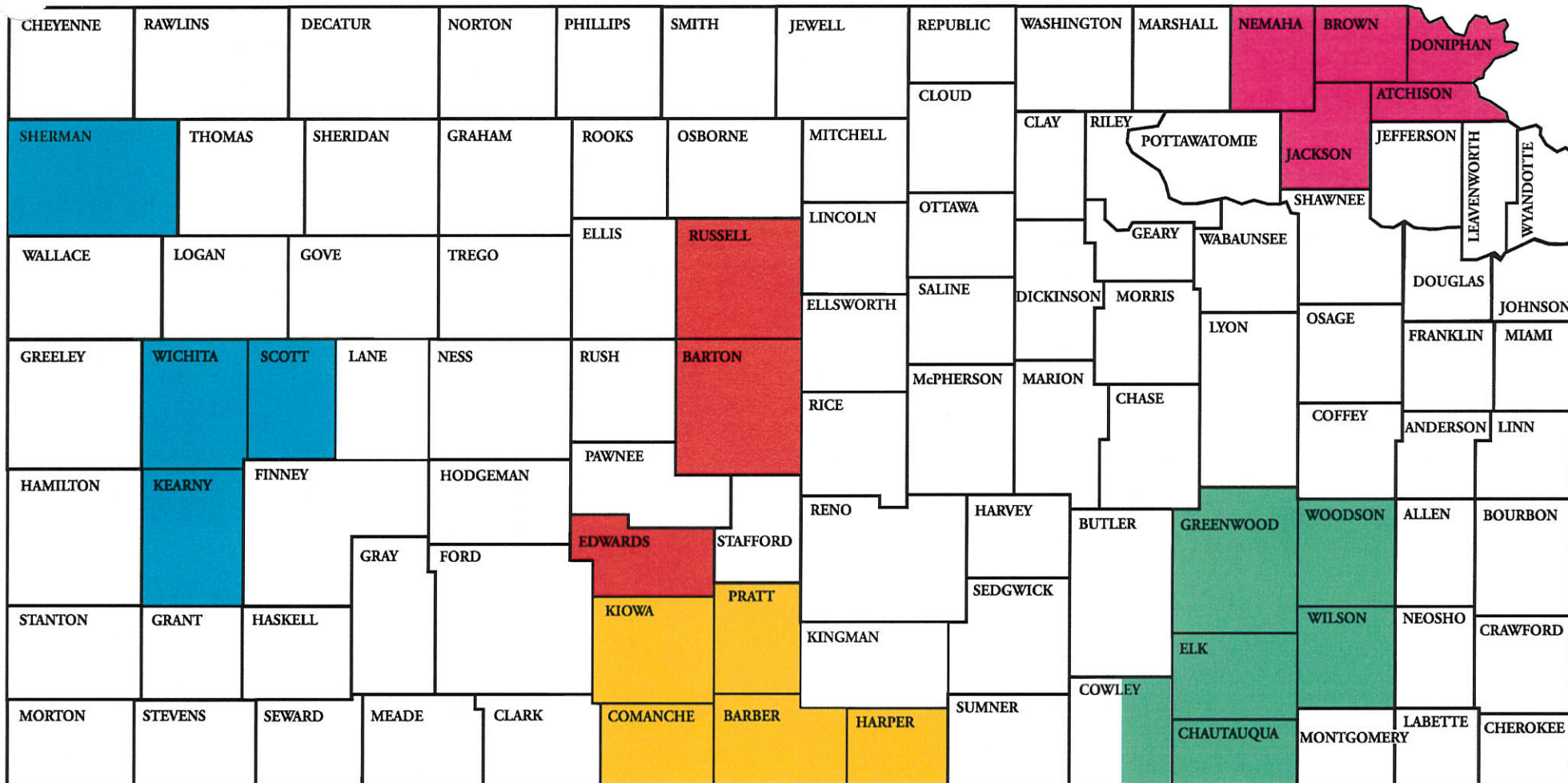
Northwest Region: Northwest Kansas Planning and Development Commission, 319 N. Pomeroy, P.O. Box 248, Hill City, Kansas 67642. Phone: 785-421-2151. (Website under construction)

North Central Region: North Central Kansas Community Network Co., 109 N. Mill Street, Beloit, Kansas 67430, Phone: 785-738-2218. For more information, visit www.ncrpc.org.

East Central Region: East Central Kansas Rural Development Tax Credit Program, 109 E. Second Street, Ottawa, Kansas 66067, Phone: 785-242-1000. For more information, visit www.ruralksec.net.

Kansas Enterprise Facilitation Communities

2-5



- BLUE - Western Kansas
- GREEN - QUAD
- PINK - Northeast Kansas Enterprise Facilitation Initiative
- YELLOW - Sunflower RC&D
- RED - Prairie Enterprise Project