

MINUTES OF THE JOINT COMMITTEE OF SENATE ASSESSMENT AND TAXATION
COMMITTEE AND SENATE COMMERCE COMMITTEE

The meeting was called to order by Chairman Barbara Allen at 10:40 A.M. on February 8, 2008 in Room 123-S of the Capitol.

All members were present except:

Pat Apple- excused
Roger Reitz-excused
Jay Emler-excused

Committee staff present:

Scott Wells, Office of Revisor of Statutes
Ryan Hoffman, Kansas Legislative Research Department
Jason Long, Office of Revisor of Statutes
Jennifer Thierer, Kansas Legislative Research Department
Jackie Lunn, Committee Assistant
Judy Swanson, Committee Assistant

Conferees appearing before the committee:

Joan Wagnon, Secretary of Kansas Department of Revenue
Dave Kerr, Secretary of Kansas Department of Commerce

Others attending:

See attached list.

Jason Long, Revisor of Statutes Office, presented a review of **SB 497—creating the Kansas investment credit act and the Kansas jobs credit act.** (Attachment 1) **SB 497** creates two new business tax credits called the investment credit and the jobs credit. These two new credits would replace the current business tax credit acts known as the Enterprise Zone Act, the HPIP tax credit, and the Job Expansion and Investment Credit Act. The Investment Credit Act would provide a tax credit for eligible taxpayers against such taxpayer's income tax liability equal to 10% of the amount of the qualified investment made by the taxpayer. The qualified investment must be equal to at least \$300,000 if the facility is not located in an Opportunity Zone. Opportunity Zones are established by the Secretary of Commerce. **SB 497** would allow the taxpayer to apply to receive a cash refund in lieu of claiming the tax credit. This new tax credit is intended to replace existing business tax credits.

The Kansas jobs credit portion of the bill provides a tax credit against the eligible taxpayer's income tax liability equal to a specified dollar amount per new employee hired. The bill includes business facilities located in a disaster area that has been designated an Opportunity Zone.

During Committee discussion on **SB 497**, Mr. Long said additional requirements, along with NAICS codes, are needed if a business is an ancillary headquarters. The qualifying NAICS codes in the proposed bill are not the same as current qualifying NAICS codes. There is no cap on the amount of credits that can be awarded annually as long as the business meets qualifications in the statute. Micropolitan areas are not excluded under current law but are excluded in the proposed legislation.

Joan Wagnon, Secretary of Kansas Department of Revenue (KDOR), said the \$10 million in refundable payments proposed in **SB 497** was not figured into the Governor's FY 2009 Budget, but the Governor supports the bill. A way to finance the \$10 million needs to be found. In response to Senator Brownlee, Secretary Wagnon said without the refundability provision the bill is revenue neutral. There will be approximately \$55 million claimed in 2009 under current law, and that amount would remain the same in the proposal, but the program make-up has been changed in the bill. Secretary Wagnon said KDOR and Kansas Department of Commerce (KDOC) both support the \$10 million refund portion of **SB 497**.

Senator Derek Schmidt asked who the "winners" and "losers" would be if **SB 497** was enacted. Secretary Wagnon said it was not the intent to incent routine investment in Kansas, but to encourage new investment in Kansas. The winners will be the poorest areas of the state, and the losers will be businesses which do not need incentives. She said it is all about "return on investment". The threshold level for

CONTINUATION SHEET

MINUTES OF THE Joint Committee of Senate Assessment and Taxation Committee and Senate Commerce Committee at 10:40 A.M. on February 8, 2008 in Room 519-S of the Capitol.

qualifying investments was set high so routine investment would not qualify under the bill. She indicated the definition of "retail" is tortuous. The bill is a comprehensive re-write of current law. Secretary Wagon said there is some wisdom in not taking action on this bill before a comprehensive audit is complete, but she anticipates the audit will be completed next week.

Jennifer Thierer, Kansas Legislative Research Department (KLRD), presented information which the Committee requested in the Joint meeting on February 1. (Attachment 2)

Secretary of Commerce Dave Kerr said he would provide the Committee information on the net fiscal impact of **SB 497** next week.

Ms. Thierer reported Oklahoma has two programs that provide cash rebates to companies that create new jobs, and also an investment fund that is used to finance capital improvements.

Colorado sells tax credits, but only conservation easement credits, not economic development credits.

The following was distributed to Committee members:

Current NAICS codes (Attachment 3)

Proposed NAICS codes in **SB 497** (Attachment 4)

Map of Micropolitan areas in State of Kansas (Attachment 5)

Business and job development credits by county (Attachment 6)

Key points about the HPIP program (Attachment 7)

Letter from Dave Kerr, President of Hutchinson/Reno County Chamber of Commerce expressing concerns (Attachment 8)

Letter from Alli Devine, Kansas Livestock Association, concerns about **SB 497** (Attachment 9)

Potential amendments to **SB 497** (Attachment 10)

In response to Senator Brownlee, Secretary Wagon said **SB 497** does not affect current available tax credits. They will be preserved and companies will be allowed to carry them forward. Under **SB 497**, if a company wants to claim tax credits that is permissible, but the company could in lieu thereof apply for the credit refundability. KDOC will make the decision as to what company gets refundable credits and the amount of each credit.

Senator Brownlee said the outstanding \$400 million in existing HPIP credits is a looming amount still out there. Secretary Wagon said some companies have settled recently and some companies will never use the credits, although they could be claimed at some future date.

Prioritization of the \$10 million in available refunds under **SB 497** was discussed. Secretary Kerr said he hoped the process would be threefold: 1) Established through Rules and Regulations; 2) Set up according to objective criteria; and 3) Proposed credits would be built into a fair formula that is weighted. He said a first-come, first-serve method of awarding these credits would not be appropriate.

Senator Jordan stated the Angel Tax Credit program was a program that probably did not get the most out of the dollars invested.

Secretary Kerr said some small towns will be excluded under this bill due to the micropolitan exclusion, but he felt it is more important to look at the economically disadvantaged areas. In response to Senator Schmidt, Richard Cram (KDOR) said this bill would subsidize people who will probably not have a tax liability.

Being no further business, the meeting adjourned at 10:30 a.m. The next meeting of the Joint Committee will be February 15.

SENATE *JOINT*
ASSESSMENT & TAXATION COMMITTEE
COMMERCE COMMITTEE
GUEST LIST

DATE: 02-08-08

NAME	REPRESENTING
Kent Eckles	O.P. Chamber of Commerce
Eric Steffey	ABC of KY
Sheikh Faham	KACCT
Ron Seebur	Herr Law Firm
Sandy Braden	KPLV
Christy Caldwell	Togalen Corp
MARK BORANYAK	CAPITOL STRATEGIES

MARCY ANN TORRENCE, ATTORNEY
REVISOR OF STATUTES

JAMES A. WILSON III, ATTORNEY
FIRST ASSISTANT REVISOR

GORDON L. SELF, ATTORNEY
FIRST ASSISTANT REVISOR



OFFICE OF REVISOR OF STATUTES
KANSAS LEGISLATURE

Legal Consultation—
Legislative Committees and Legislators
Legislative Bill Drafting
Legislative Committee Staff
Secretary—
Legislative Coordinating Council
Kansas Commission on
Interstate Cooperation
Kansas Statutes Annotated
Editing and Publication
Legislative Information System

**Briefing on Senate Bill 497 -
Investment and Jobs Tax Credits**

Jason B. Long
Assistant Revisor
Office of Revisor of Statutes

February 8, 2008

Overview

Senate bill 497 creates two new business tax credits called the investment credit and the jobs credit. Under the bill these two new credits will replace the current business tax credit acts known as the Enterprise Zone Act, the HPIP tax credit, and the job expansion and investment credit act. The investment tax credit provides a tax credit for qualified investments in a business facility located in Kansas. The jobs tax credit provides a tax credit for the creation of new jobs in the state. Both tax credits are refundable with an aggregate cap of \$10 million on the amount of refunds that may be paid out in any one fiscal year. Finally, the bill amends K.S.A. 79-3606 to provide sales tax exemptions for tangible property or services purchased as part of the qualified investment.

Investment Credit Act

Sections 1 through 9 of the bill consist of the Kansas investment credit act. The act would provide a tax credit for eligible taxpayers against such taxpayer's income tax liability equal to 10% of the amount of the qualified investment made by the taxpayer. If there is

insufficient tax liability the taxpayer may carry the credit forward for 10 years or until the credit is exhausted, whichever comes first.

In order to qualify for the tax credit the taxpayer must meet the requirements of section 3 of the bill. First, the taxpayer must make a qualified investment in a Kansas business facility. A “qualified investment” is defined in subsection 2(g) as the value of real and tangible personal property permanently and physically located at a Kansas business facility, excluding inventory, construction in progress or property held for sale to customers. As defined in subsection 2(e), a “Kansas business facility” includes structures such as factories, plants, mills and feedlots, and requires that the structure be located in Kansas. The definition also requires that: (1) the structure house employees or machinery and equipment; (2) the facility be used in the operation of a revenue producing enterprise; and (3) if it is acquired from another person that it was not used in substantially the same enterprise as it will be used by the eligible taxpayer.

In order to qualify the business facility must be identified under the following NAICS codes: 112112; or a subsector of 221, 311-425, 481-624, 812, 813 or 922-928. If the facility is identified under one of these codes then the taxpayer must also demonstrate that more than 50% of the business gross revenues are a result of sales to Kansas manufacturing firms identified under NAICS codes 311-339, or to customers outside of the state. If the facility does not fall under one of the above NAICS codes it may still qualify if it is a headquarters or ancillary support operation. Those terms are defined in subsections 2(d) and 2(b), respectively.

Second, the qualified investment must be equal to at least \$300,000 if the facility is not located in an opportunity zone. If the facility is located in an opportunity zone, then the investment only needs to be equal to at least \$50,000. “Opportunity zones” are zones established by the secretary of commerce in accordance with the following statutory criteria: (1) it must consist of at least one county; (2) it must be deemed economically disadvantaged by the secretary; (3) it must not include any county located in a metropolitan or micropolitan statistical area; and (4) it must meet any other criteria established by the secretary through rules and regulations. Additionally, the secretary may designate a county as a disaster area and establish that county as an opportunity zone for so long as the county remains a designated disaster area.

This designation may be made regardless of whether the county meets any of the above four requirements for standard opportunity zones.

Finally, to qualify for the tax credit the taxpayer must meet one of the criteria for satisfying the requirement that the taxpayer will pay a higher-than-average wage within a wage region at the business facility. Subsection 3(a)(3) contains the criteria for meeting this requirement. This is similar to what is currently required for the HPIP tax credit.

Under section 9 of the bill if the taxpayer has a Kansas business facility, located in a disaster area that has been designated as an opportunity zone by the secretary of commerce, that has sustained damage or lost jobs as a result of damage due to severe weather, the taxpayer will qualify for investment tax credits under the act for investments made to rebuild or replace the facility. A taxpayer qualifying under this section qualifies for the investment tax credits regardless of whether such taxpayer meets any of the requirements of section 3.

Section 8 allows the taxpayer to apply to receive a cash refund in lieu of claiming the tax credit. Refunds are only granted upon approval by the secretary of commerce, whose decision is final. The secretary is required to establish criteria for the consideration of refunds. The refund amount cannot exceed 40% of the tax credit earned under the act. If the refund is approved by the secretary and accepted by the taxpayer, then the taxpayer will forfeit the remaining portion of the tax credit. This section expires on January 1, 2013.

As stated above, this new tax credit is intended to replace existing business tax credits. Section 7 of the bill provides that no additional credits may be earned under the Kansas Enterprise Zone Act, the job expansion and investment credit act or the HPIP tax credit program after December 31, 2007. Any credits earned under those provisions may still be carried forward in accordance with those provisions.

Jobs Credit Act

Sections 10 through 16 of the bill comprise the Kansas jobs credit act. This act provides a tax credit against the eligible taxpayer's income tax liability equal to a specified dollar amount per new employee hired. If there is insufficient tax liability the taxpayer may carry forward the credit until it is fully exhausted.

Under section 12 of the bill in order to qualify for the jobs credit the taxpayer must be either a Kansas job credit taxpayer or an opportunity zone job credit taxpayer. A “Kansas job credit taxpayer,” as defined in subsection 11(c), must have a Kansas business facility, as defined in the investment credit act that either meets one of the NAICS codes listed, or is a headquarters or ancillary support operation, as those terms are defined in the investment credit act. An “opportunity zone job credit taxpayer” simply must have a Kansas business facility operating in an opportunity zone. Opportunity zones are designated by the secretary of commerce in the same manner and under the same criteria as set forth in the investment credit act.

The amount of the tax credit depends on the type and location of the Kansas business facility. If the facility is operating in an opportunity zone then the taxpayer is allowed a credit of \$3,500 per new employee hired, provided the taxpayer hires at least two new employees. If the facility is not located in an opportunity zone, but is identified under one of the listed NAICS codes then the taxpayer is allowed a credit of \$1,500 per new employee hired, provided the taxpayer hires at least five new employees. If the facility is not located in an opportunity zone, but is a headquarters or ancillary support operation, then the taxpayer is allowed a credit of \$1,500 per new employee, provided the taxpayer hires at least 20 new employees. As stated above, the credit may be carried forward until exhausted, but if the taxpayer fails to continue to employ the minimum number of employees then any remaining credit will be forfeited.

The jobs credit is also refundable pursuant to section 15 of the bill. Any refund may only be for up to 40% of the amount of the tax credit. All refunds are subject to the approval of the secretary of commerce. If a refund is awarded and accepted the taxpayer forfeits any remaining portion of the tax credit. As with section 8, this section expires on January 1, 2013. The total aggregate amount of refunds that may be awarded for both investment and job credits cannot exceed \$10,000,000 for any one fiscal year.

Section 16 of the bill contains provisions almost identical to section 9 regarding qualification for tax credits by taxpayers with business facilities located in a disaster area that has been designated an opportunity zone by the secretary of commerce. As with the investment credit act, such taxpayers will also qualify for job credits for employees the taxpayer hires back or retains in the opportunity zone.

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Sales Tax Exemption

Section 21 of the bill amends K.S.A. 79-3606(cc). This subsection currently exempts sales of tangible personal property or services purchased for the purpose of and in conjunction with construction, reconstruction, enlarging or remodeling a business under the Enterprise Zone Act, and the sale and installation of machinery and equipment in such business from sales tax. The bill changes the application of the exemption from businesses under the Enterprise Zone Act to a Kansas business facility, as defined in section 2. The bill would also allow an eligible taxpayer under the investment credit act, or a Kansas or opportunity job credit taxpayer to obtain a tax exemption certificate for purchases that are exempt from sales tax under this subsection. This exemption certificate is only valid for two years from the date of application, but that time period may be extended under the proper circumstances.

Finally, a person constructing, reconstructing, enlarging or remodeling a business facility that is to be leased for at least five years to an eligible taxpayer, as defined in the investment credit act, or a Kansas or opportunity job credit taxpayer will still be entitled to a sales tax exemption under this subsection. The amount of the exemption is reduced if the person claiming the exemption leases less than all of the facility.

Other Amendatory Sections

Sections 17 through 20 make amendments to other statutes to strike references to the current tax credits that are being repealed by the bill. Where applicable these sections are amended to replace the current tax credit references with references to the new tax credit acts established by the bill.

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February 7, 2008

To: Chairperson Barbara Allen
Chairperson Karin Brownlee
Chairperson Nick Jordan
Members of the Senate Committee on Assessment and Taxation
and Senate Committee on Commerce

From: Jennifer Thierer, Legislative Intern

Re: Questions raised about SB 497

The Committee raised several questions related to testimony given on January 31, 2008 on SB 497. Below is a brief response to those questions.

What Is the Net Fiscal Impact?

Chairperson Brownlee raised concerns with the fiscal note's exclusion of information about the net impact of the bill, which would take reinvestment of the tax credit amounts into consideration. The Department of Commerce was contacted to provide reinvestment information, and this information will be provided to the Committee as soon as it is made available to our office.

How Does Oklahoma Fund Its Programs?

Oklahoma has two programs that were mentioned in testimony from the Wichita Metro Chamber of Commerce: the Oklahoma Quality Jobs Program and the Oklahoma Opportunity Fund. The Oklahoma Quality Jobs Program provides cash rebates to companies that create new jobs and meet certain minimum wage, salary, and payroll standards. It is funded through general fund appropriations from the Oklahoma Legislature. The Oklahoma Opportunity Fund was created last calendar year using a \$45 million surplus in state funds from the previous fiscal year. The Fund also can be funded through further appropriations by the Oklahoma Legislature. This fund provides investment money for businesses in Oklahoma. If the investment is used to finance a capital improvement, the state then retains an interest in the project in proportion to the amount invested. If the improvement is sold, the state investment is repaid with interest and the business must provide the state with a proportionate share of any profit from the sale. This aspect provides potential additional revenue for the Fund, as well as a disincentive for companies to move out of Oklahoma.

How Does Colorado's Tax Credit Sale Program Work?

Testimony from the Association of Ethanol Processors indicated that in Colorado state tax credits may be sold. However, a representative from the Colorado Office of Economic Development and International Trade indicated that economic development tax credits may not be sold in the state. He said proposals have been made to implement a sale program, but none have been passed by the Colorado Legislature. In order to clarify this, Duane Simpson, of the Association of Ethanol Processors, was contacted. He indicated his information came from an accounting firm that does business in Colorado. David Berger, of the accounting firm Kennedy and Company, provided the original information, which Mr. Berger said did not apply to economic development credits. Mr. Berger stated that Colorado allows the sale of Conservation Easement credits, which are income tax credits granted to businesses based on participation in water conservation programs. These sales are done by private negotiation between businesses and usually earn about 85 cents on the dollar.

The following major NAICS categories are currently eligible for HPIP:

- 221 utilities
- 311-339 manufacturing

- 423-425 wholesaling
- 481-488 transportation
- 491-492 postal service/couriers & messengers
- 493 warehousing/storage
- 511-519 publishing/motion pictures/broadcasting/other information services
- 521-525 finance & insurance related
- 531-533 real estate & leasing services
- 541-562 professional/technical/management/administrative services
- 611 educational services
- 621-623 medical services
- 624 social assistance

- 711 performing arts & spectator sports (currently HPIP-eligible)
- 712 museums, historical sites, zoos & parks (currently HPIP-eligible)
- 713 amusements, gambling & recreation (currently HPIP-eligible)
- 721 accommodation (currently HPIP-eligible)
- 811 repair & maintenance (currently HPIP-eligible)
- 814 private households (currently HPIP-eligible)

- 812 personal & laundry services
- 813 membership associations & organizations

- 921 executive, legislative, and general government (currently HPIP-eligible)
- 922 justice, public order, and safety activities
- 923 administration of human resource programs
- 924 administration of environmental programs
- 925 community and housing program administration
- 926 administration of economic programs
- 927 space research & technology
- 928 national security & international affairs

The following major NAICS categories are not eligible, unless
the worksite is determined by Commerce to be a headquarters or ancillary
support operation:

- 111-115 agriculture-related
- 211-213 mining/mineral extraction
- 236-238 construction
- 441-454 retail
- 722 food services/drinking establishments

David Bybee
HPIP Manager
785-296-7174

NAICS included in proposed legislation (SB 497)

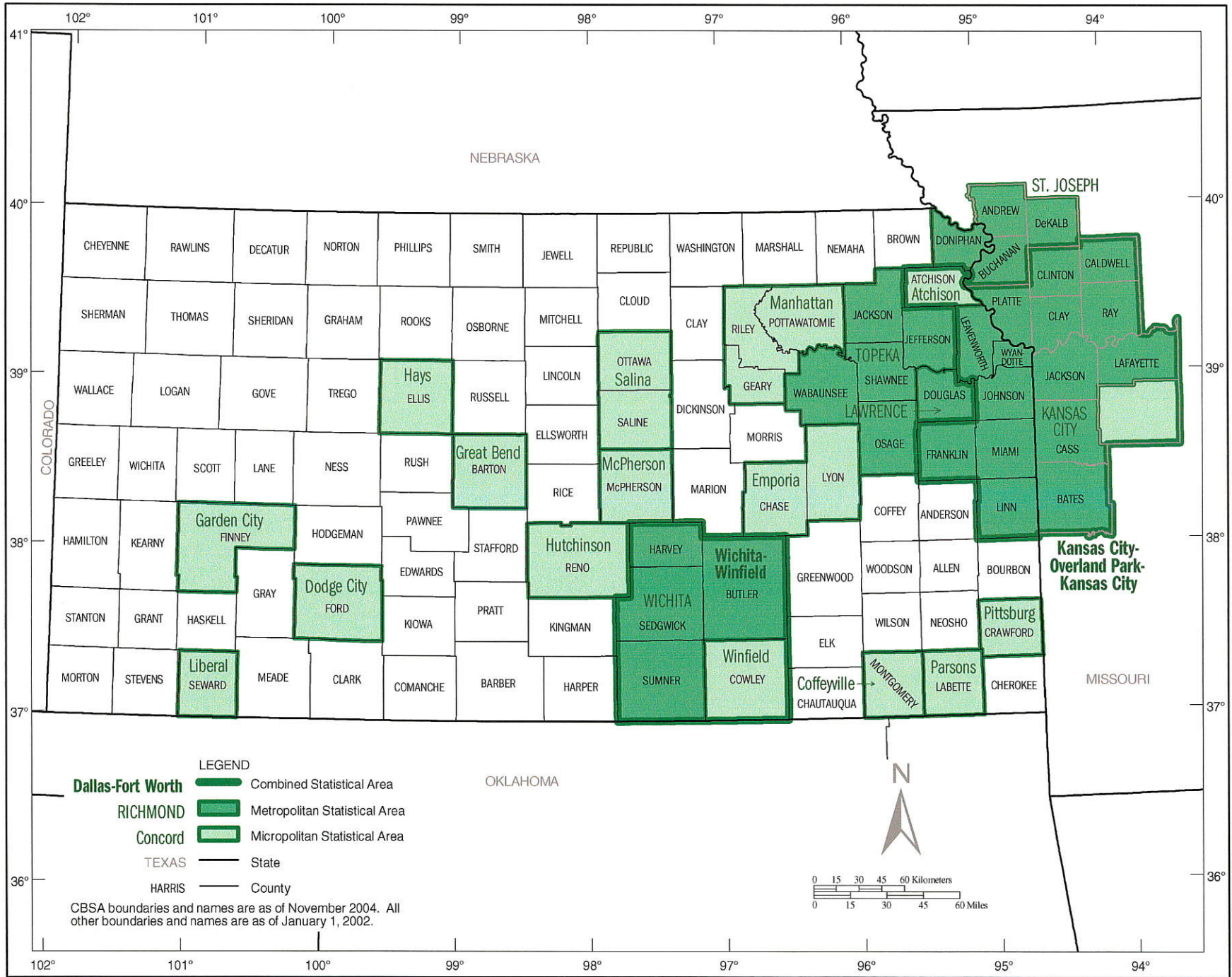
112112 Cattle Feedlots
221 Utilities
311-339 Manufacturing
311-Food Manufacturing
312-Beverage and Tobacco Product Manufacturing
313-Textile Mills
314-Textile Product Mills
315-Apparel Manufacturing
316-Leather and Allied Product Manufacturing
321-Wood Product Manufacturing
322-Paper Manufacturing
323-Printing and Related Support Activities
324-Petroleum and Coal Products Manufacturing
325-Chemical Manufacturing
326-Plastics and Rubber Products Manufacturing
327-Nonmetallic Mineral Product Manufacturing
331-Primary Metal Manufacturing
332-Fabricated Metal Product Manufacturing
333-Machinery Manufacturing
334-Computer and Electronic Product Manufacturing
335-Electrical Equipment, Appliance, and Component Manufacturing
336-Transportation Equipment Manufacturing
337-Furniture and Related Product Manufacturing
339-Miscellaneous Manufacturing
423-425 Wholesale Trade
423-Merchant Wholesalers, Durable Goods
424-Merchant Wholesalers, Nondurable Goods
425-Wholesale Electronic Markets and Agents and Brokers
481-493 Transportation and Warehousing
481-Air Transportation
482-Rail Transportation
483-Water Transportation
484-Truck Transportation
485-Transit and Ground Passenger Transportation
486-Pipeline Transportation
487-Scenic and Sightseeing Transportation
488-Support Activities for Transportation
491-Postal Service
492-Couriers and Messengers
493-Warehousing and Storage
511-519 Information
511-Publishing Industries (except Internet)

512-Motion Picture and Sound Recording Industries
515-Broadcasting (except Internet)
516-Internet Publishing and Broadcasting
517-Telecommunications
518-Internet Service Providers, Web Search Portals, and Data Processing Services
519-Other Information Services
521-525 Finance and Insurance
521-Monetary Authorities-Central Bank
522-Credit Intermediation and Related Activities
523-Securities, Commodity Contracts, and Other Financial Investments and Related Activities
524-Insurance Carriers and Related Activities
525-Funds, Trusts, and Other Financial Vehicles
531-533 Real Estate and Rental and Leasing
531-Real Estate
532-Rental and Leasing Services
533-Lessors of Nonfinancial Intangible Assets (except Copyrighted Works)
541 Professional, Scientific, and Technical Services
551 Management of Companies and Enterprises
561-562 Administrative and Support and Waste Management and Remediation Services
561-Administrative and Support Services
562-Waste Management and Remediation Services
611 Educational Services
621-624 Health Care and Social Assistance
621-Ambulatory Health Care Services
622-Hospitals
623-Nursing and Residential Care Facilities
624-Social Assistance
812 Personal and Laundry Services
813 Religious, Grantmaking, Civic, Professional, and Similar Organizations
922 Justice, Public Order, and Safety Activities
923 Administration of Human Resource Programs
924 Administration of Environmental Quality Programs
925 Administration of Housing Programs, Urban Planning, and Community Development
926 Administration of Economic Programs
927 Space Research and Technology
928 National Security and International Affairs

NAICS not included in proposed legislation

111-115 Agriculture, Forestry, Fishing and Hunting (except for 112112-Cattle Feedlots)
111-Crop Production
112-Animal Production (except for 112112-Cattle Feedlots)
113-Forestry and Logging
114-Fishing, Hunting and Trapping
115-Support Activities for Agriculture and Forestry
211-213 Mining
211-Oil and Gas Extraction
212-Mining (except Oil and Gas)
213-Support Activities for Mining
236-238 Construction
236-Construction of Buildings
237-Heavy and Civil Engineering Construction
238-Specialty Trade Contractors
441-454 Retail Trade
441-Motor Vehicle and Parts Dealer
442-Furniture and Home Furnishings Stores
443-Electronics and Appliance Stores
444-Building Material and Garden Equipment and Supplies Dealers

445-Food and Beverage Stores
446-Health and Personal Care Stores
447-Gasoline Stations
448-Clothing and Clothing Accessories Stores
451-Sporting Goods, Hobby, Book, and Music Stores
452-General Merchandise Stores
453-Miscellaneous Store Retailers
454-Nonstore Retailers
711-713 Arts, Entertainment, and Recreation
711-Performing Arts, Spectator Sports, and Related Industries
712-Museums, Historical Sites, and Similar Institutions
713-Amusement, Gambling, and Recreation Industries
721-722 Accommodation and Food Services
721-Accommodation
722-Food Services and Drinking Places
811 Repair and Maintenance
814 Private Households
921 Executive, Legislative, and Other General Government Support



KANSAS - Core Based Statistical Areas and Counties

BUSINESS AND JOB DEVELOPMENT CREDITS BY COUNTY
 PROCESSED IN CALENDAR YEAR 2006 (a)

ESTABLISHMENTS WITH CARRYOVER (b)

Site of Project: County	Number Filers by Co. (c)	Number Claims Filed	Reported Number New Employees (d)	Qualified Average Investment (d)	Total New Credit Allowable (e)	Credit Taken	Carryover Amount
Allen	6	7	11	\$606,418	\$10,175	\$205,373	\$1,837,196
Anderson	544	646	70	\$11,819,791	\$1,434	\$23,864	\$178,860
Bourbon	5	5	4	\$661,552	\$17,000	\$12,252	\$5,667
Butler	9	9	73	\$2,509,894	\$207,500	\$25,993	\$520,351
Chase	15	15	0	\$0	\$0	\$155	\$49,374
Cowley	17	18	38	\$8,838,753	\$149,000	\$41,663	\$114,922
Crawford	28	34	81	\$4,843,331	\$234,854	\$183,765	\$286,097
Dickinson	12	17	38	\$703,021	\$72,000	\$126,512	\$209,290
Douglas	17	20	85	\$3,864,907	\$149,600	\$341,264	\$254,531
Ellis	6	7	25	\$344,749	\$28,000	\$28,468	\$42,283
Ellsworth	5	5	12	\$899,314	\$39,000	\$38,000	\$4,625
Finney	11	11	13	\$4,532,068	\$77,500	\$17,110	\$335,240
Ford	149	186	2,726	\$27,245,346	\$555,065	\$137,770	\$199,914
Harper	16	20	143	\$2,609,621	\$53,085	\$71,105	\$128,928
Harvey	8	8	76	\$5,432,448	\$243,000	\$249,214	\$143,685
Johnson	191	212	1,161	\$99,234,115	\$2,508,314	\$1,792,756	\$3,812,493
Labette	13	13	69	\$644,152	\$179,000	\$157,110	\$20,561
Leavenworth	8	9	79	\$6,183,473	\$153,062	\$141,520	\$61,311
Logan	24	24	5	\$307	\$85	\$1,276	\$3,079
Lyon	7	9	28	\$222,814	\$77,780	\$77,500	\$462
Marion	13	13	11	\$775,536	\$27,274	\$31,964	\$3,094
Marshall	5	5	0	\$0	\$0	\$19,217	\$4,472
McPherson	39	40	133	\$7,344,479	\$427,170	\$315,184	\$204,864
Miami	6	6	15	\$1,884,455	\$56,500	\$43,866	\$66,848
Montgomery	6	7	24	\$1,830,446	\$78,000	\$15,672	\$1,952,313
Nemaha	12	14	63	\$4,284,097	\$155,000	\$53,053	\$193,768
Norton	6	7	19	\$1,153,985	\$59,500	\$16,183	\$76,282
Pottawatomie	9	16	36	\$2,410,128	\$132,198	\$125,645	\$368,326
Reno	17	24	157	\$11,137,766	\$405,500	\$327,627	\$153,929
Rice	12	15	11	\$536,868	\$21,500	\$31,572	\$117,563
Riley	7	10	0	\$0	\$0	\$129,368	\$30
Russell	29	29	16	\$260,681	\$29,169	\$47,483	\$64,481
Saline	24	24	144	\$2,580,425	\$279,548	\$286,057	\$36,679
Sedgwick	137	174	1,166	\$48,263,036	\$1,846,329	\$1,407,810	\$1,607,039
Seward	5	5	22	\$3,200,781	\$87,000	\$41,630	\$79,965
Shawnee	12	13	74	\$1,669,703	\$107,751	\$121,903	\$235,760
Wyandotte	30	44	254	\$12,903,263	\$501,134	\$292,527	\$903,053
Other (f)	<u>52</u>	<u>62</u>	<u>455</u>	<u>\$8,691,599</u>	<u>\$687,352</u>	<u>\$796,214</u>	<u>\$1,247,326</u>
Total	1,512	1,783	7,337	\$290,123,322	\$9,656,379	\$7,775,644	\$15,524,662

Assessment & Taxation
 Date 2-8-08
 Attachment # 6

ESTABLISHMENTS WITHOUT CARRYOVER (b)

Site of Project: County	Number Filers by Co. (c)	Number Claims Filed	Reported Number new Employees (d)	Qualified Average Investment (d)	Total Credit Available (g)	Credit Taken
Barton	7	14	65	\$3,653,401	\$8,797	\$9,497
Butler	13	26	127	\$5,352,518	\$28,153	\$30,166
Cloud	8	8	21	\$1,763,458	\$3,275	\$2,328
Cowley	34	65	30	\$2,326,293	\$7,758	\$8,869
Douglas	84	120	149	\$8,630,266	\$39,517	\$70,291
Ellis	37	72	51	\$2,331,541	\$12,947	\$14,397
Finney	37	68	27	\$2,504,076	\$12,449	\$12,883
Gray	8	18	14	\$3,851,200	\$5,816	\$7,378
Harvey	11	14	50	\$3,486,065	\$8,151	\$36,401
Johnson	218	574	1,601	\$76,369,096	\$518,988	\$512,614
Leavenworth	11	33	83	\$5,796,658	\$19,679	\$15,289
Lyon	7	8	4	\$269,687	\$1,700	\$1,291
McPherson	9	16	41	\$2,233,130	\$7,975	\$9,160
Miami	5	6	15	\$375,822	\$2,400	\$2,053
Montgomery	5	7	25	\$1,521,903	\$5,022	\$3,460
Pottawatomie	7	9	35	\$4,203,973	\$7,684	\$5,294
Reno	11	15	66	\$3,993,125	\$12,981	\$13,539
Riley	36	50	126	\$12,451,273	\$44,330	\$44,268
Russell	5	5	8	\$567,053	\$736	\$1,147
Saline	17	20	161	\$10,385,304	\$33,974	\$28,879
Sedgwick	115	290	770	\$33,752,825	\$203,816	\$227,092
Seward	34	62	16	\$827,818	\$4,500	\$5,718
Shawnee	35	58	324	\$12,912,467	\$66,439	\$104,280
Sumner	5	5	13	\$547,433	\$3,000	\$15,145
Thomas	6	6	5	\$140,642	\$900	\$1,198
Wyandotte	14	22	113	\$5,862,363	\$23,845	\$692,586
Other (h)	<u>51</u>	<u>63</u>	<u>235</u>	<u>\$17,250,445</u>	<u>\$68,211</u>	<u>\$63,369</u>
Total	830	1,654	4,175	\$223,359,835	\$1,153,043	\$1,938,591

- (a) Process/calendar year January 1, 2006 through December 31, 2006.
- (b) Carryover of excess credit amount is permitted only for manufacturing and nonmanufacturing firms. Nonmanufacturing firms shall also include the business headquarters of an enterprise, ancillary support of an enterprise and an enterprise designated under standard industrial classification codes 5961, 7372 or 7948 with 20 or more new employees.
- (c) K.S.A. 79-3234(b) requires confidentiality of filer information. Policy states that data from fewer than five filers is confidential. For this reason, number of filers is within each county. For this count, the "other" category is treated as a single county. Because a single filer may have claims in more than one county, the total number of filers by county is overstated.
- (d) These are unaudited amounts.
- (e) This is new credit, and does not include possible carryover credit.
- (f) Those with fewer than five filers (27 counties): Atchison, Barton, Brown, Clark, Clay, Cloud, Coffey, Franklin, Geary, Gove, Grant, Gray, Hodgeman, Lane, Linn, Meade, Mitchell, Morris, Neosho, Osborne, Ottawa, Rooks, Rush, Sheridan, Sumner, Washington, and Wilson.
- (g) Because of restrictions on amount of liability that can be reduced, the available amount can exceed the amount taken.
- (h) Those with fewer than five filers (32 counties): Allen, Anderson, Bourbon, Brown, Cherokee, Coffey, Crawford, Dickinson, Ford, Franklin, Geary, Gove, Graham, Greenwood, Jackson, Kearny, Kingman, Kiowa, Labette, Linn, Logan, Marion, Marshall, Mitchell, Neosho, Osage, Pawnee, Rice, Rush, Scott, Stevens, and Wallace.

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Key Points about the High Performance Incentive Program (HPIP)

- 1) HPIP is an incentive program, not an entitlement program. Business demonstrate foreknowledge by pre-identifying anticipated investment before locking in the scope of investment.
- 2) HPIP was structured to reward businesses that have satisfied program objectives. Benefits cannot be claimed based on promises of future performance.
- 3) HPIP is not available to businesses in which tax benefits have no impact on their decision about where to locate (e.g., retailers, mining, agriculture, construction, not-for-profits).
- 4) HPIP does not require job creation, but new job creation is typically part of the kind of major investment that generates the largest benefits from the program.
- 5) All participants must pay an above-average wage and invest in employee training. Some must also focus on out-of-state sales to pull new dollars into the state's economy.

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Kansas High Performance Incentive Program (HPIP)

Benefits	Investment Tax Credit	Sales Tax Exemption	Training Tax Credit	Priority Consideration
	10% of qualifying investment over \$50,000 10-year carry-forward (worksite must re-qualify)	Must be requested before spending occurs	Capped at \$50,000 No carry-forward	While its worksite is HPIP-qualified, the firm receives priority consideration from other state business programs

Requirements for worksite qualification (investment must also be pre-identified to qualify for credits):

Worksites in eligible non-manufacturing NAICS categories (not including retailing, agriculture, mining, construction, or not-for-profits)

Only wage & training requirements apply to manufacturing NAICS categories, and to headquarters or back-office worksites of (multi)national organizations in any NAICS category

Pay an above-average wage	Provide Employee Training	Sources-of-Revenues
<ul style="list-style-type: none"> - based on major NAICS category, number of worksite employees, and worksite location - updated in Q3 each calendar year - fallback qualification based on alternative wage threshold of 1 ½ times state-wide average wage 	<ul style="list-style-type: none"> - spend 2% of wages on eligible training, or - participate for at least 3 months in a KIT or KIR or IMPACT workforce training project 	<ul style="list-style-type: none"> - more than half of worksite revenues must be generated from sales to Kansas manufacturers and/or out-of-state commercial/governmental organizations

General Flow of HPIP Activities

CIPD

Capital Investment Project Description

PR-70b

Request for Project Exemption Certificate

HPIP Application Documents

HPIP Certification Letter

Kansas Income Tax Filing

Future Kansas Income Tax Filings



Pre-identify Anticipated Investment to Commerce

Request sales tax exemption from Revenue

Submit application to Commerce, documenting satisfaction of requirements to qualify the worksite during the investment spending timeframe.

Qualification Requirements
NAICS Category
Above-Average Wage
Employee Training
Sources-of-Revenues (sometimes)

Commerce issues certification letter to Revenue, verifying worksite satisfaction of HPIP qualification requirements.

On income tax filing, claim HPIP credits for pre-identified investment spending, related to assets that were placed into service during that tax year, if the spending occurred while the investment worksite was qualified.

Carry-forward unused credits up to 10 years, and use those credits in any year in which the worksite re-qualifies for HPIP for more than half the year.

1-3

RE: HPIP Quarterly Performance Report through 12/31/07 - based on when the certification paperwork was processed

IMPORTANT NOTE: Presentation of the following information is based on the period in which the HPIP certification paperwork was processed, but the company's certification period may begin anytime within the statutory timeframe during which the Kansas Department of Revenue will allow an amended tax filing (normally up to 3 prior tax years).

CAUTION: The sales tax exemption is based on estimates, and is inflated to the degree businesses decide to acquire materials for their capital investment from outside the state.

	"first-time" certifications	initial certifications	re-certification of a previously certified	total of all certifications & re-certifications	existing employees			anticipated increase in capital investment	potential investment tax credit	estimated sales tax exemption available through HPIP	estimated sales tax exemption available thru E-Zone or IRB's	number of certifications using:			amount of independent training which exceeds 2% of payroll		companies receiving match \$ for consulting services	match \$ claimed for consulting services
		at a secondary location	worksite		worksites when certified	weighted average wage	anticipated job creation					train-ing pro-grams	inde-pendent training	both	training tax credit earned			
FY94	2	0	0	2	391	27,643	26	23,500,000	2,340,000	0	764,000	1	1	0	138,128	50,000	0	0
FY95	13	0	0	13	2,262	32,117	279	41,666,166	4,111,617	588	1,300,680	3	9	1	479,492	314,822	2	25,000
FY96	31	1	9	41	9,036	44,383	479	285,956,593	28,415,659	2,550,312	4,497,541	13	26	2	2,627,754	799,049	7	75,000
FY97	17	2	15	34	8,118	41,126	2,567	307,176,293	30,582,629	356,230	7,850,260	14	19	1	2,663,656	543,805	1	12,500
FY98	15	0	24	39	10,425	43,879	979	187,757,821	18,630,782	831,667	4,154,699	14	23	2	4,308,949	818,062	2	25,000
FY99	25	4	33	62	24,509	41,236	1,799	542,387,041	53,963,704	3,072,518	6,856,692	21	38	3	7,770,039	1,104,546	1	12,500
FY00	16	0	35	51	31,897	46,556	1,245	593,172,618	58,992,262	8,079,497	4,907,361	20	30	1	9,477,644	1,044,255	0	0
FY01	35	0	49	84	44,012	51,767	1,920	609,690,828	60,529,083	2,482,790	9,594,626	30	52	2	9,791,661	1,819,318	0	0
FY02	26	0	44	70	18,972	40,280	947	569,261,268	56,571,128	10,650,952	4,113,679	26	41	3	5,919,185	1,340,190	0	0
FY03 Totals	28	2	70	100	37,783	45,111	1,381	515,397,524	51,079,752	3,619,755	7,178,543	35	60	5	8,452,698	2,178,667	0	0
FY04 Totals	33	0	60	93	21,683	55,093	13,263	2,019,913,424	201,581,343	4,997,667	30,939,167	37	55	1	8,244,629	1,878,488	0	0
FY05 Totals	35	6	99	140	50,697	192,101	4,200	1,834,810,655	182,866,065	7,630,676	18,778,508	65	74	1	11,758,240	2,224,941	0	0
FY06	35	2	99	136	36,960	not calc'd	1,257	1,228,768,682	122,196,868	11,281,332	8,650,001	64	70	2	21,528,478	2,541,486	0	0
FY07	34	1	104	139	44,020	not calc'd	2,786	1,964,928,633	195,797,863	11,278,934	20,992,706	63	72	4	6,268,125	2,573,633	0	0
FY08(Q1 & Q2)	14	0	51	65	33,112	not calc'd	639	2,126,056,650	212,280,665	24,520,428	4,414,108	28	37	0	7,635,745	1,184,323	0	0
Totals	359	18	692	1,069	373,877	---	33,767	12,850,444,196	1,279,939,420	91,353,346	134,992,571	434	607	28	107,064,423	20,415,585	13	150,000
Avg / Cert	---	---	---	---	350	---	32	12,020,996	1,197,324	85,457	126,279	---	---	---	100,154	19,098	0	140

H-L

February 5, 2008

Committee Co-Chairperson Brownlee,

We are pleased that the Senate Commerce Committee is considering SB497 to simplify the HPIP program and streamline it together with the Enterprise Zone program. While both of these programs are beneficial and often utilized by Hutchinson and Reno County, they are extremely cumbersome for companies to utilize and to administer. The Kansas Department of Commerce tries to be very helpful to us and to eligible businesses, but the complexity of these programs makes them less than business friendly.

As supportive as we are of simplifying these programs, we are extremely concerned with certain provisions of the bill that make Opportunity Zones non-applicable Micropolitan Statistical Areas. Enhanced Enterprise Zone incentives have made it possible for us to work in small Reno County communities, such as Haven, Partridge, and Buhler, that otherwise would have no tools with which to assist business locations and expansions. Without these incentives, these small communities will be placed on the same competitive level as the largest cities.

As SB497 is written currently, Hutchinson and the ten very small towns in Reno County, as well as all Kansas Micropolitans and their surrounding counties will be at a disadvantage competitively as they work to attract new companies. Their small businesses seeking to expand will also be at a disadvantage. The list of affected Micropolitans is as follows:

- Atchison & Atchison County
- Coffeyville & Montgomery County
- Dodge City & Ford County
- Emporia & Lyon County
- Garden City & Finney County
- Hays & Ellis County
- Hutchinson & Reno County
- Liberal & Seward County
- Manhattan & Riley County
- McPherson & McPherson County
- Parsons & Labette County
- Pittsburg & Crawford County
- Salina & Saline County
- Winfield & Cowley County

Senator Brownlee, we ask that you distribute this information to the Senate members of the Commerce Committee and that SB497 be changed to designate Micropolitans as Opportunity Zones. Thank you for understanding our concerns.

Sincerely,

Dave Kerr
President
Hutchinson/Reno County Chamber of Commerce

Assessment & Taxation
Date 2-8-08
Attachment # 8



Since 1894

TESTIMONY

To: Joint Committee of the Senate Committee on Assessment and Taxation and the Senate Committee on Commerce
Senator Barbara Allen and Senator Karin Brownlee, Chairpersons

From: Allie Devine, Vice President and General Counsel
Kansas Livestock Association

Date: February 8, 2008

Subject: Written testimony regarding SB 497

The Kansas Livestock Association (KLA), formed in 1894, is a trade association representing approximately 6,000 members on legislative and regulatory issues. KLA members are involved in many aspects of the livestock industry, including seed stock, cow-calf and stocker production, cattle feeding, grazing land management and diversified farming operations.

Thank you for the opportunity to offer comments on SB 497. Please recall Kansas ranks 2nd in the nation in the value of cattle and calves at \$5.7 billion. It is not a "given" that cattle feeding will always be strong in Kansas. As corn prices rise, and growth in ethanol production produces byproducts that are costly to transport, cattle feeding may shift to locations where there are large supplies of ethanol byproducts. We applaud efforts to retain and encourage Kansas business and in particular those related to agriculture and beef in particular.

We are pleased with the addition of NAICS 112112 beef cattle feedlots to the bill. We are also pleased that the definition of "opportunity zone" will make many entities in rural areas eligible for the benefits of the bill.

However, we are concerned that some aspects of livestock production may be excluded from the bill by the definition of "opportunity zone" or exclusion of key NAICS numbers.

The term "opportunity zone" does not include a "micropolitan statistical area" (See page 2 line 36). It is our understanding that the counties of Barton, Finney, Seward, and Ford would be considered "micropolitan statistical areas". These

Assessment & Taxation
Date 2-8-08
Attachment # 9

are the same areas that contain major cattle feeding operations wherein growth may occur yet because of location, these businesses would be excluded from the benefits of SB 297. We recommend that the term "micropolitan statistical area" be deleted from the definition of "opportunity zone" throughout the bill or modifications made to allow the benefits to apply to beef and dairy related industries. We understand KDOR's reluctance to strike this term and offer alternative language that would allow the Secretary to "waive the restrictions of section 11(e)(3) to encourage the building, or expansion of agriculturally related industries within a micropolitan statistical area." (See attached suggested amendments.)

In the last few years we have seen a number of dairies relocate to Kansas from other states. Economic development groups have courted these businesses. We understand that there are dairy related facilities being built in Gray, Haskell, and Hamilton counties. An average dairy will invest over 25 million dollars and will employ 10 people per 1,000 cows milked. A 25 million dollar facility will employ at least 10 people. We encourage the committee to include these facilities in the bill by adding NAICS 112120.

A major part of sustaining the dairy industry in Kansas is the development of dairy herd replacement operations. We know of two such facilities under construction. Unfortunately, the NAICS system includes operations that raise cattle for dairy herd replacements with "beef cattle ranching and farming" NAICS 112111. Last year in discussions with the Secretary we understood KDOR's concern that this term may be overly broad. Given the limitations of the NAICS system, we encourage the committee to add 112111 to assure that Kansas remains competitive in retaining beef and dairy operations.

KLA and our partners within the industry have been working to perfect new uses of composted cattle manure. Through research at KSU we have discovered that composted cattle manure when pelletized results in a valuable soil stabilization product. Last year, with funding from the legislature, a soil remediation field trial was conducted. We do not have the complete results of the field trial but are encouraged by early reports. If successful, this could open the door to a new "green" company in Kansas. The NAICS codes do not adequately capture this type of operation. ANAICS number which would be close but not precise is 325314. Again, we ask that the committee include these numbers or provide the Secretary with authority to add NAICS numbers by regulation to encourage the growth of a particular segment in Kansas. (See attached suggested amendments.)

Thank you for your time and consideration.

KLA List of Suggested Amendments:

Issue of limitations on counties within micropolitan statistical areas:

Suggested changes:

Option 1: On page 2 line 36 strike “or micropolitan statistical area”.

Or

Option 2: On page 2 line 37 after the word “regulations.” Add the following:

“The Secretary may waive the provisions of Section 11(e) (3) to encourage the building, or expansion of agriculturally related industries within counties designated as a micropolitan statistical area.”

Please note: conforming amendments may need to be made in other sections of the bill including the following:

On page 10 lines 14 or 15.

Issue of limitations to industries not included in the NAICS numbers:

Suggested changes:

1. To incorporate “dairy cattle and milk production” into the bill:

On page 4 line 15 after “112112” add “112120”:

2. To incorporate dairy herd replacement operations classified as “beef cattle ranching and farming” by NAICS:

On page 4 line 15 after “112112” add “112111”

3. To incorporate compost manufacturing

On page 4 line 15 after “112112” add “325314”.

Please note: conforming amendments will need to be made throughout the bill including the following sections:

On page 5 line 34:

On page 9 line 27;

As of 2/8/08

Potential Amendments to SB 497

- Retain current training tax credit, but do not tie to eligibility for the investment tax credit
- Lower the proposed investment tax credit eligibility threshold in non-opportunity zones to accommodate smaller businesses
 - Currently the threshold is \$50,000; new proposed threshold is \$300,000
 - Consider \$150,000 threshold and/or \$50,000 threshold for businesses with fixed assets of less than \$3 million
- Remove current requirement that 50% of revenues be from out of state in order to make the investment tax credit program more accessible to smaller businesses
- Review NAICS codes to ensure any additions and deletions make sense
- Review impact of elimination of the Enterprise Zone Act on micropolitan communities, such as Hutchinson, that would not qualify as opportunity zones
- Set forth some framework around the proposed refundability program, including perhaps an annual cap per company
- Consider option of allowing tax credits to be sold on the open market, rather than making them refundable
- Consider whether further simplification of the tax credit process is possible
- Look at the net fiscal note of SB 497 without the disaster relief provisions that are currently included
- Page 6, line 43-public utilities have been omitted
- Micropolitan statistical area definition
- Amendment to the NAICS numbers