

MINUTES OF THE HOUSE TAXATION COMMITTEE

The meeting was called to order by Chairman Richard Carlson at 9:00 a.m. on March 19, 2009, in Room 535-N of the Capitol.

All members were present except Representative Lisa Benlon who was excused.

Committee staff present:

Gordon Self, Office of the Revisor of Statutes  
Scott Wells, Office of the Revisor of Statutes  
Chris Courtwright, Kansas Legislative Research Department  
Kathy Beavers, Committee Assistant

Conferees attending:

Ron Gaches, Southern Star Central Gas Pipeline, and El Paso  
Larry Garrett, Colorado Interstate Gas Company

Others attending:

See attached list.

The Chairman opened the meeting at 9:10 a.m.

Bill introductions:

Representative King made a motion to introduce a bill concerning income taxation, particularly tax refunds. Representative George seconded the motion. The motion carried.

**HB 2378 - Public utility defined for property tax purposes related to natural gas inventories.**

The Chairman stated some committee members had additional questions concerning **HB 2378** that was heard in committee March 18, 2009. He requested opponents Ron Gaches, Southern Star Central Gas Pipeline, and El Paso and Larry Garrett, Colorado Interstate Gas Company, to stand for questions.

**SB 78 - Special assessments in transportation districts.**

Chris Courtwright, Kansas Legislative Research Department, briefed the committee on **SB 78** and stood for questions.

Representative Dillmore made a motion to move SB 78 favorably for passage. Representative Menghini seconded the motion. Representative Dillmore closed on the motion. The motion carried.

**HB 2328 - Sales tax holiday providing exemption for certain purchases of school supplies, computers and clothing.**

Representative Peck made a motion to move HB 2328 favorably for passage. Representative Wolf seconded the motion. Discussion ensued.

Representative Peck made a conceptual motion to amend HB 2328. Page 32, subsection (dddd), line 19, to change the date from July 1, 2009 to July 1, 2011. Representative Wolf seconded the motion. Representative Peck closed his motion and requested that the committee move HB 2328, as amended, favorably for passage. The motion carried. Representative Dillmore called for division. Nine members were in favor of the motion and 8 were opposed.

**HB 2365 - Creating the promoting employment across Kansas act.**

The Chairman requested that Representative Kleeb brief the committee on **HB 2365**. Representative Kleeb summarized **HB 2365**. Information concerning **HB 2365** was distributed to the committee members (Attachment 1).

Representative Seigfried made a motion to move HB 2365 favorably for passage. Representative Goico

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seconded the motion. Discussion followed.

Representative Kleeb made a motion to amend **HB 2365** in the form of a substitute bill (Attachment 2). Seconded by Representative George. Discussion followed. Scott Wells, Office of the Revisor of Statutes, briefed the committee on changes to the original bill and answered questions. Discussion followed.

Chairman Carlson stated that **HB 2365** would not be voted on today and will be continued at tomorrow's meeting.

Representative Brown introduced his pages from Eudora, Kansas. They are his daughter, Anna Brown, and her friends, Cambry Lynch, and Sophia Lehmann.

Representative George introduced his pages from Dodge City, Kansas. They are Christian Fisher, Caleb Fisher, Hannah Harrold and Taylor Fisher.

The next meeting is scheduled for March 20, 2009.

The meeting was adjourned at 10:25 a.m.



## Promoting Employment Across Kansas Act (PEAK)

### Objectives

- Foster economic development, business opportunities and the creation of new jobs through the use of incentives for companies:
  - o To repatriate facilities, operations and jobs from foreign countries
  - o To relocate facilities, operations and jobs from other states to Kansas.
  - o To choose Kansas for new facilities or expansion
  - o To choose Kansas for job relocations during mergers and acquisitions
- Posture Kansas competitively with other states, particularly Missouri, that are using more creative and aggressive business development and recruitment tools
- Prospective Opportunities: IT, Engineering, Business Processing Operations, Call Center, Manufacturing, Contract Packaging

### Qualifications:

#### **Companies must demonstrate to the Secretary of Commerce that:**

- An operation outside of Kansas (domestic or foreign) is being closed and bringing the employees to Kansas.
- Kansas has been chosen for the expansion of, or the establishment of new, operations over another state or country.
- A third party outsourcing provider has been authorized and requested by a qualifying company to perform services on its behalf in Kansas vs. another state or country *and the third party provider is subject to Kansas withholding.*
- At least ten new jobs paying the county average wage will be created in metropolitan counties (Johnson, Douglas, Sedgwick, Shawnee and Wyandotte).
- Five new jobs paying at least the county average wage will be created in non-metropolitan counties.
- *Non-profit and Bio-Science organizations excluded from participation*
- *Companies are excluded from participating in more than one State tax withholding incentive program...no "double dipping"*
- *Provides for the Secretary of Commerce to have written agreements with qualifying companies outlining thresholds, timeframes and audits. Agreements can have "claw back" provisions.*
- *The Secretary has longer than 30 days to approve and certify applications from prospective qualified companies. Companies must be certified and this is not an entitlement program.*

## **Incentives for Qualified Companies-No Minimum Withholding**

Qualifying companies for a certain number of years may retain Kansas withholding taxes when employees are compensated at least 100% the county average wage. This withholding retention period is graduated and tied to the percentage rate of compensation paid above the county average wage.

- Five years when a company compensates at least 100% of the county average wage.
- Six years when a company compensates at least 110% of the county average wage.
- Seven years when a company compensates at least 120% of the county average wage.

## **High Impact Qualified Companies: At least 100 new employees.**

Qualifying companies for a certain number of years may retain Kansas withholding taxes when an employee is compensated at least 100% of the county average wage. This withholding retention period is graduated and tied to the percentage rate compensation above the county average wage.

- Seven years when a company compensates to at least 100% of the county average wage.
- Eight years when a company compensates to at least 110% of the county average wage.
- Nine years when a company compensates to at least 120% of the county average wage
- Ten years when a company compensates to at least 140% of the county average wage.

## **Income Tax Exemption Benefit.- Removed in Substitute 2365**

Qualify companies will obtain state income tax exemption for the first five years after meeting the qualifications.

## Substitute for HOUSE BILL NO. 2365

By Committee on Taxation

AN ACT creating the promoting employment across Kansas act.

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

Section 1. (a) The provisions of sections 1 through 7, and amendments thereto, shall be known and may be cited as the promoting employment across Kansas act.

(b) It shall be the intent of this act to foster economic development and the creation of new jobs and opportunities for the citizens of Kansas through incentivizing the repatriation of business facilities, other operations and jobs from foreign countries and to incentivize the relocation of business facilities, other operations and jobs from other states to Kansas. The primary objective of this legislation is economic development for Kansas. The state of Kansas, the secretary of the department of commerce and the department of commerce shall solicit and approve applications by qualified companies pursuant to this act.

Sec. 2. As used in this act, unless the context otherwise requires:

(a) "Act" means the provisions of sections 1 through 7, and amendments thereto.

(b) "County average wage" means the average wage paid to employees located in the county where the qualified company intends to hire new employees as reported by the department of labor in its annual report for the previous year.

(c) "Department" means the department of commerce.

(d) "High-impact project" means a business development project for which the qualified company shall meet the requirements of subsection (c) of section 3, and amendments thereto.

(e) "NAICS" means the North American industry classification system.

(f) "Metropolitan county" means the county of Douglas, Johnson, Sedgwick, Shawnee or Wyandotte.

(g) "New employee" means a person newly employed by the qualified company in the qualified company's business operating in Kansas during the taxable year for which benefits are sought under section 3, and amendments thereto. A person shall be deemed to be so engaged if such person performs duties in Kansas in connection with the operation of the Kansas business on: (1) A regular, full-time basis; (2) a part-time basis, provided such person is customarily performing such duties at least 20 hours per week throughout the taxable year; or (3) a seasonal basis, provided such person performs such duties for substantially all of the season customary for the position in which such person is employed. New employees shall be the number of employees employed at the qualified company's Kansas business on the last business day of the qualified company's tax year. Employees acquired or relocated to Kansas from another state through an expansion or relocation of a business operation to Kansas from another state shall be considered as new employees.

(h) "Non-metropolitan county" means any county that is not a metropolitan county.

(i) (1) "Qualified company" means any corporation, partnership or other entity, organized for profit, which meets the requirements of section 3, and amendments thereto.

(2) "Qualified company" shall not include any corporation, partnership or other entity: (A) Which is identified by any of the following NAICS code groups, sectors or subsectors:

(i) Industry group 7132 or 8131;

(ii) sectors 44, 45, 61, 92 or 221 (including water and sewer services); or

(iii) subsector 722;

(B) which is a bioscience company, as defined in K.S.A. 2008 Supp. 74-99b33, and amendments thereto;

(C) which is delinquent in the payment of any nonprotested taxes or any other amounts due to the federal government, the state of Kansas or any other political taxing subdivision; or

(D) which has filed for or has publicly announced its intention to file for bankruptcy protection.

(3) Notwithstanding any provision of this subsection, except for paragraphs (2)(B), (C) and (D), a company may be deemed a qualified company if such company's headquarters or administrative offices located in this state serve an international or multi-state territory and such company meets the requirements of section 3, and amendments thereto.

(j) "Secretary" means the secretary of the department of



commerce.

Sec. 3. (a) In order to qualify for benefits under this act a qualified company shall:

(1) Close down an existing business facility, office, department or other operation located outside the state of Kansas, whether located in a foreign country or another state, and relocate the employees from such business facility, office, department or other operation to Kansas as a result of such closing;

(2) expand its business operations to Kansas from another state which results in the employment of new employees, provided, such expansion is not of an existing facility or other business operation already located in Kansas;

(3) contract with a third party to perform services on the qualified company's behalf as part of such company's business model, provided the qualified company directs that the services are performed in Kansas and the third party and the new employees are subject to Kansas state withholding; or

(4) contract with a third party to perform services whereby the third party serves as the legal employer of the new employees providing services to the qualified company and such services are performed in Kansas and the third party and the new employees are subject to Kansas state withholding.

(b) Any qualified company that locates its business operation in a metropolitan county and will hire at least 10 new employees within two years from the date the qualified company

enters into an agreement with the secretary pursuant to section 4, and amendments thereto, or any qualified company that locates its business operation in a non-metropolitan county and will hire at least two new employees within two years from the date the qualified company enters into an agreement with the secretary pursuant to section 4, and amendments thereto, shall be eligible to retain 100% of the qualified company's Kansas payroll withholding taxes for such new employees for a period of:

(1) Five years if the new employees are compensated at a rate equal to at least 100% of the county average wage;

(2) six years if the new employees are compensated at a rate equal to at least 110% of the county average wage; or

(3) seven years if the new employees are compensated at a rate equal to at least 120% of the county average wage.

(c) Any qualified company that engages in a high-impact project whereby the qualified company will hire at least 100 new employees within five years from the date the qualified company enters into an agreement with the secretary pursuant to section 4, and amendments thereto, shall be eligible to retain 100% of the qualified company's Kansas payroll withholding taxes for such new employees for a period of:

(1) Seven years if the new employees are compensated at a rate equal to at least 100% of the county average wage;

(2) eight years if the new employees are compensated at a rate equal to at least 110% of the county average wage;

(3) nine years if the new employees are compensated at a

rate equal to at least 120% of the county average wage; or

(4) ten years if the new employees are compensated at a rate equal to at least 140% of the county average wage.

(d) In the event that a qualified company contracts with a third party as described in paragraphs (a)(3) and (4), it shall be permissible for the third party to remit payments equal to the amount of Kansas payroll withholding taxes the qualified company is eligible to retain under this section.

Sec. 4. (a) Any qualified company meeting the requirements of section 3, and amendments thereto, may apply to the secretary for benefits under this act. The application shall be submitted on a form and in a manner prescribed by the secretary, and shall include: (1) Evidence that the applicant is a qualified company; and (2) evidence that the applicant meets the requirements of section 3, and amendments thereto.

(b) The secretary shall either approve or disapprove the application. Any qualified company whose application is approved shall be eligible to receive benefits under this act as of the date such qualified company enters into an agreement with the secretary in accordance with this section.

(c) Upon approval of an application for benefits under this act, the secretary may enter into an agreement with the qualified company for benefits under this act. If necessary, the secretary may also enter into an agreement with any third party described in subsection (a) of section 3, and amendments thereto, or such third party may be a party to the agreement between the qualified

company and the secretary. The agreement shall commit the secretary to certify to the secretary of revenue: (1) That the qualified company is eligible to receive benefits under this act; (2) the number of new employees hired by the qualified company; and (3) the amount of gross wages being paid to each new employee.

(d) The agreement between the qualified company and the secretary shall be entered into before any benefits may be provided under this act, and shall specify that should the qualified company fail to comply with the terms and conditions set forth in the agreement, or fails to comply with the provisions set forth in this act, the secretary may terminate the agreement, and the qualified company shall not be entitled to any further benefits provided under this act and shall be required to remit to the state an amount equal to the aggregate Kansas payroll withholding taxes retained by the qualified company, or remitted to the qualified company by a third party, pursuant to this act as of the date the agreement is terminated.

(e) A qualified company that is already receiving benefits pursuant to this act may apply to the secretary for additional benefits if the qualified company meets the requirements of section 3, and amendments thereto, and if such qualified company makes such application within five years from the date the qualified company entered into the first agreement with the secretary pursuant to this section.

(f) A qualified company seeking benefits shall not be

allowed to participate in the IMPACT program, or any program pursuant to K.S.A. 74-50,102, and amendments thereto, or any other program in which any portion of such qualified company's Kansas payroll withholding taxes have been pledged to finance indebtedness or transferred to or for the benefit of such company. A qualified company shall not be allowed to claim any credits under K.S.A. 79-32,153, 79-32,160a or 79-32,182b, and amendments thereto, if such credits would otherwise be earned for the hiring of new employees and the qualified company has retained any Kansas payroll withholding taxes from wages of such employees.

(g) The secretary shall adopt rules and regulations necessary to implement and administer the provisions of this act.

Sec. 5. (a) Any qualified company eligible to receive benefits pursuant to section 3, and amendments thereto, shall complete and submit to the department of revenue the amount of Kansas payroll withholding tax being retained by the qualified company pursuant to this act in a manner prescribed by the director of taxation.

(b) The secretary of revenue shall adopt rules and regulations necessary to implement and administer the provisions of this act. The secretary of revenue and the secretary of commerce shall work together to coordinate a set of procedures to implement the provisions of this act.

Sec. 6. (a) The secretary shall conduct an annual review of the activities undertaken by a qualified company pursuant to this

act to ensure that the qualified company is in compliance with the provisions of this act, any rules and regulations adopted by the secretary with respect to this act and the agreement described in section 4, and amendments thereto. The books and records concerning employment and wages of any employees for which the qualified company has retained any Kansas payroll withholding taxes shall be available for inspection by the secretary or the secretary's duly authorized agents or employees at all times during business hours. Notwithstanding any taxpayer confidentiality laws, the secretary may request the department of revenue to audit the qualified company for compliance with the provisions of this act, and the department of revenue may report any findings resulting from such audit to the secretary.

(b) If the secretary determines that a qualified company is not in compliance with the requirements of this act, the secretary, by written notice, shall inform the officers of the qualified company that such qualified company is not in compliance and is not eligible to receive any benefits under this act for the duration of the period the company is not in compliance. In the event a qualified company is not in compliance the secretary shall certify such determination to the secretary of revenue.

Sec. 7. The secretary shall transmit annually to the governor, the standing committee on commerce of the senate, the standing committee on economic development and tourism of the house of representatives and the joint committee on economic

development, or any successor committee, a report, based on information received from each qualified company receiving benefits under this act, describing the following:

- (a) The names of the qualified companies;
- (b) the types of qualified companies utilizing the act;
- (c) the location of such companies and the location of such companies' business operations in Kansas;
- (d) the number of new employees hired;
- (e) the wages paid for such new employees;
- (f) the annual amount of benefits provided under this act;
- (g) the estimated net state fiscal impact, including the direct and indirect new state taxes derived from the new employees hired; and
- (h) an estimate of the multiplier effect on the Kansas economy of the benefits received under this act.

Sec. 8. This act shall take effect and be in force from and after its publication in the statute book.