

MINUTES OF THE SENATE ASSESSMENT AND TAXATION COMMITTEE

The meeting was called to order by Chairman Les Donovan at 10:30 a.m. on March 12, 2009, in Room 535-N of the Capitol.

All members were present except:  
Senator Jeff Colyer- excused

Committee staff present:  
Gordon Self, Office of the Revisor of Statutes  
Scott Wells, Office of the Revisor of Statutes  
Corey Carnahan, Kansas Legislative Research Department  
Chris Courtwright, Kansas Legislative Research Department  
Mary Jane Brueck, Committee Assistant

Conferees appearing before the Committee:  
Kent Eckles, Vice President of Government Affairs, Kansas Chamber of Commerce  
Ashley Sherrard, Vice President, Lenexa Chamber of Commerce  
Lavern Squire, Kansas Economic Development Association  
David D. Kerr, Secretary, Kansas Department of Commerce  
Dave Holtwick, Vice President of Government Affairs, Overland Park, Kansas  
April Holman, Kansas Action for Children  
Joan Wagon, Secretary of Kansas Department of Revenue

Others attending:  
See attached list.

Chairman Donovan opened the meeting, and asked what the committee wishes were for **HB 2321 - Political subdivision under the Kansas retailers' sales tax act to include horsethief reservoir benefit district.** After discussion, Sen. Holland moved the bill be moved out of committee to the floor. Sen. Marshall seconded the motion. Motion carried.

Chairman Donovan opened a hearing on **SB 244 - Eligible businesses under the economic revitalization and reinvestment act.** Kent Eckles, Vice President of Government Affairs, Kansas Chamber of Commerce, was the first proponent to speak. He explained the Chamber feels this bill would make the state more competitive and help spur investment and job creation in Kansas. (Attachment 1)

Ashley Sherrard, Vice President, Lenexa Chamber of Commerce said they favor this bill to make it easier for Kansas to compete for businesses to come to our state. She included a map showing states around Kansas that now have this sort of incentive. (Attachment 2)

Lavern Squire, spoke on behalf of the Kansas Economic Development Association, as the Competitiveness Task Force Chair. They believe this bill would provide additional opportunities for companies that are ready and willing to invest in Kansas. (Attachment 3)

David D. Kerr, Secretary, Kansas Department of Commerce, said he sees this bill is a good step in the right direction, but does not see a significant difference with the IMPACT program. The state needs a comprehensive strategic plan to go about what we need to do for the State. (Attachment 4)

Dave Holtwick, Vice President of Government Affairs, Overland Park, Kansas submitted written testimony in favor of this bill. (Attachment 5)

There were no neutral conferees.

April Holman, Kansas Action for Children spoke in opposition of this bill. They are concerned about the erosion of the Kansas tax base. (Attachment 6)

Joan Wagon, Secretary of Kansas Department of Revenue, supports giving the Secretary of Commerce the flexibility to offer cash incentives to companies to come to Kansas, but she feels this must be done without

CONTINUATION SHEET

Minutes of the Senate Assessment and Taxation Committee at 10:30 a.m. on March 12, 2009, in Room 535-N of the Capitol.

threatening future employer withholding tax revenue growth. (Attachment 7)

The next meeting is scheduled for March 17, 2009.

The meeting was adjourned at 11:47 a.m.

SENATE  
Assessment & Taxation Committee  
GUEST LIST

DATE: 3/12/09

NAME	REPRESENTING
Kent Eckles	KS Chamber
Ashley Stovard	Lexxa Chamber
Matt Casey	BBA
Whitney Jamson	KADA
Brad Stauff	Carter Group
Michelle Butler	Capitol Strategics



**Testimony before the Senate Assessment & Taxation Committee  
SB 244 – The Economic Revitalization & Reinvestment Act  
Presented by J. Kent Eckles, Vice President of Government Affairs**

**Thursday, March 12<sup>th</sup>, 2009**

The Kansas Chamber of Commerce appreciates the opportunity to present testimony in favor of Senate Bill 244, The Economic Revitalization & Reinvestment Act.

The Chamber welcomes expanding eligibility to other industry sectors under the original, enabling legislation. The bottom line is if a company meets the established investment and job creation thresholds, we believe they should be able to participate after being certified by the Kansas Department of Commerce.

The Chamber further offers support to this legislation because we believe it is not good public policy to do company or industry specific legislation for the following reasons:

- Many companies do not want to approach the legislature publicly seeking assistance in the form of special legislation especially in the current "bailout environment," which reflects negatively on businesses.
- Timing issues are a major concern on competitive projects, especially when the legislature is not in session most of the calendar year. The State has lost projects to competitor states because we did not have the economic development tools or necessary enabling legislation in place.
- By requiring company or industry specific legislation each year, it gives the impression the legislature seeks to micromanage economic development.

While we understand the legislature's stated concern about the fiscal impact of broadening eligibility to other industry sectors, we would submit not a lot of companies will meet the thresholds contained in SB 244 to begin with, and if they did, we would also submit Kansas should welcome such investment and job creation. 2,000 new jobs at average wages of \$50,000 per year/\$100m in payroll along with \$250m in new investment would undoubtedly be a good thing for the State.

We urge the Committee to pass favorably Senate Bill 244 to make the state more competitive and help spur investment and job creation in the State.

The Kansas Chamber, with headquarters in Topeka, Kansas, is the leading statewide pro-business advocacy group moving Kansas towards becoming the best state in America to live and work. The Chamber represents small, medium, and large employers all across Kansas. Please contact me directly if you have any questions regarding this testimony.





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TO: Sen. Les Donovan, Chairperson  
Members, Senate Taxation Committee

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

DATE: March 12, 2009

RE: **SB 244—Expanding Businesses Eligible for Aviation  
Economic Development Incentive Program**

The Lenexa Chamber of Commerce appreciates the opportunity to express its strong support for Senate Bill (SB) 244, which would revise prior legislation providing an economic development incentive for aviation companies to expand the definition of an “eligible business” to include non-aviation companies and to revise the company/project eligibility threshold criteria for payroll from \$600 million annually to \$100 million annually (a \$50,000 average annual wage requirement remains the same), for employment creation from 5,000 jobs to 2,000 jobs, and for capital investment from \$500 million to \$250 million.

Last year the Kansas legislature approved special industry-specific legislation providing an incentive to retain a major aviation company being recruited to other states offering substantial cash awards. **We agree that retaining these major aviation employers is good public policy for the state – but we don’t believe the legislation went far enough in helping to protect and foster a healthy statewide economy.**

As you have heard from us many times, the value of Kansas economic development incentives is rapidly losing ground. Although Kansas may fall in the middle in its overall economic development spending, Kansas’s traditional economic development tool – tax credits – is becoming less and less competitive. Other states are increasingly relying on significant cash or cash-equivalent awards, and the competition is aggressive.

Kansas’s main incentive programs that can provide cash-based resources are IMPACT and KEIOF. Unfortunately IMPACT requires the expense and trouble of bonding, and in the last legislative session KEIOF funding was slashed to less than half – down to \$1.25 million. Tax credits, issued through programs like HPIP and Enterprise Zone/Business & Job Development, aren’t valuable if a company can’t claim them due to insufficient tax liability, they aren’t transferable or refundable, and require ongoing paperwork. **In short, current Kansas incentives are making it harder and harder for us to compete for projects, especially in border counties**

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Attachment 2

While the aviation industry is of course a key economic sector in our state, there are many other businesses and industries that are also principal drivers of the Kansas economy. For example:

- Service-producing industries (excluding government and education) account for over half of total employment in Kansas and are among the highest paying.
- Service providers such as real estate, health care, finance & insurance, telecommunications and professional/technical services (for example, engineers, architects, doctors, scientists, and attorneys) represent some of Kansas's leading industry groups.
- Collectively, these five service-providing industries contribute 32% of the Kansas Gross Domestic Product (GDP), while the iconic industries most traditionally associated with Kansas – agriculture, oil & gas extraction, and aviation – combine to account for 8.6% of the Kansas GDP.

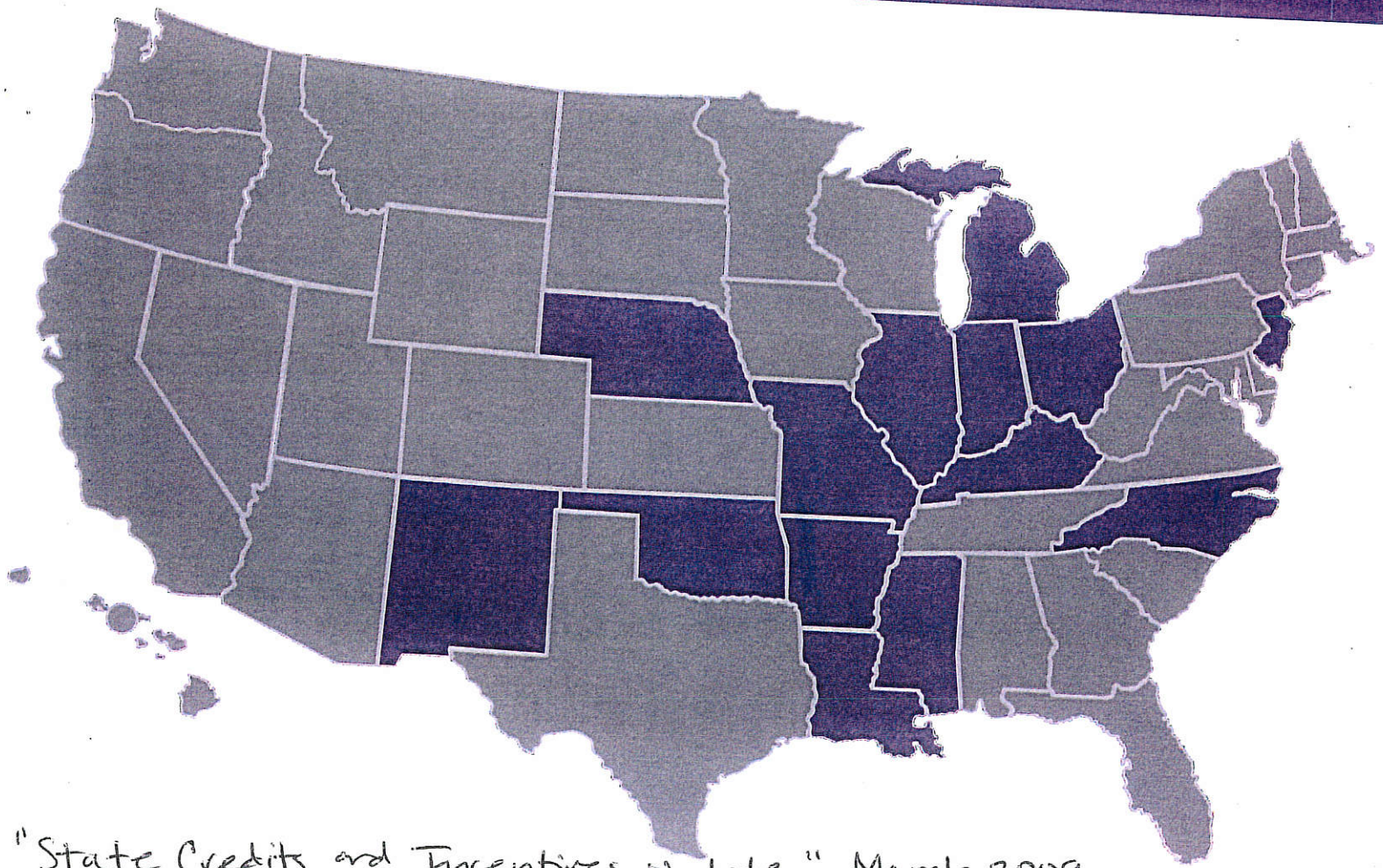
**We strongly believe it is critical to the economic future of Kansas to have available tools and resources to promote other sectors as vigorously as aviation to ensure that our state remains competitive in attracting and retaining those businesses.**

To that end, we feel SB 244 would take two very important steps in the right direction. **First, it would provide a more broadly available tool in attracting and retaining companies, albeit for only the most extraordinary projects.** We believe it is good common-sense public policy for the state to position itself to compete for *any* company willing to employ at least 2,000 workers at an average annual wage of \$50,000, carry an annual payroll of at least \$100 million, and make a capital investment of \$250 million, regardless of whether it involves aviation, engineering, or widget-making.

**Second, it would begin the process of moving the state away from relying almost solely on special project-specific legislation, which essentially limits our ability to address important economic development opportunities to the legislative session and holds projects hostage to politics.** We believe the legislature's current approach, which essentially consists of lurching from crisis to crisis, creates poor patchwork economic development policy and sends a poor message to potential projects, many of who prefer to avoid the publicity and uncertainty of dealing with the legislature.

For all of these reasons, we strongly encourage you to recommend SB 244 favorable for passage. Thank you very much for your time and attention to this important statewide issue.

# Current States with Incentive Programs based on new payroll



From "State Credits and Incentives Update," March 2009  
prepared by Grant Thornton LLP, Kansas City

**KANSAS GROSS DOMESTIC PRODUCT**  
**(In Millions of Dollars)**

**Ranked with Service-Producing Industries Grouped Together**

	<b><u>2006</u></b>	
Service-Producing Industries	\$43,950	39.7%
Manufacturing	\$16,726	15.1%
Government & Educational Services	\$16,301	14.7%
Retail Trade	\$7,490	6.8%
Wholesale Trade	\$6,810	6.2%
Transportation & Warehousing	\$4,165	3.8%
Construction	\$4,295	3.9%
Agriculture	\$2,698	2.4%
Accommodation, Food Services, & Entertainment	\$3,175	2.9%
Mining	\$2,597	2.3%
Utilities	\$2,438	2.2%
<b>Total Kansas GDP</b>	<b>\$110,645</b>	<b>100.0%</b>

**Selected Industries in Isolation**

	<b><u>2006</u></b>	
Agriculture	\$2,698	2.4%
Oil & Gas Extraction	\$1,575	1.4%
Aircraft, Autos and all other Transp. Equip. Mfg.	\$5,288	4.8%
<b>Sub-Total</b>	<b>\$9,561</b>	<b>8.6%</b>
Telecommunications & Broadcasting	\$5,779	5.2%
Finance & Insurance	\$6,454	5.8%
Real Estate	\$9,710	8.8%
Professional & Technical Services	\$5,747	5.2%
Health Care Services	\$7,699	7.0%
<b>Sub-Total</b>	<b>\$35,389</b>	<b>32.0%</b>
<b>Total Kansas GDP</b>	<b>\$110,645</b>	<b>100.0%</b>

Compiled by the County Economic Research Institute (CERI) using data published by the U.S. Bureau of Economic Analysis, the agency that provides national and state GDP estimates.

CERI is a private non-profit corporation based in Overland Park, KS, that supports economic development in the State of Kansas through the provision of data and technical assistance.





## **Testimony in Support of Senate Bill 244**

**Submitted by Lavern Squier**

**On behalf of the Kansas Economic Development Alliance (KEDA)**

**Senate Assessment and Taxation Committee**

**Thursday, March 12<sup>th</sup>, 2009**

Chairman Donovan and Committee Members:

My name is Lavern Squier and I am representing KEDA as the Competitiveness Task Force Chair. I am appearing today on behalf of our board of directors and our 180 members across Kansas. I appreciate the opportunity to share testimony with you today in support of Senate Bill 244 which expands the usability of the Economic Revitalization and Reinvestment Act.

Efforts to recruit new businesses to our area and to maintain the businesses already here have grown increasingly more difficult. With our current economic situation, changes like these will assist our economic development efforts for major projects. We believe this would help Kansas reduce the competitive disadvantage we currently face with other states, especially for such large scale projects.

This legislation would expand the program to apply to any company in any industry sector that meets minimum thresholds. The changes recommended in SB 108 would allow the aviation industry or any industry to be able to receive these incentives, provided they meet job creation and/or investment thresholds required by the legislation. SB 244 would make the law more general in scope, thereby encouraging new investment in Kansas.

In summary, we believe changing this legislation would provide additional opportunities for companies ready and willing to invest in Kansas. Thank you very much for your time today. We encourage you to support Senate Bill 244.

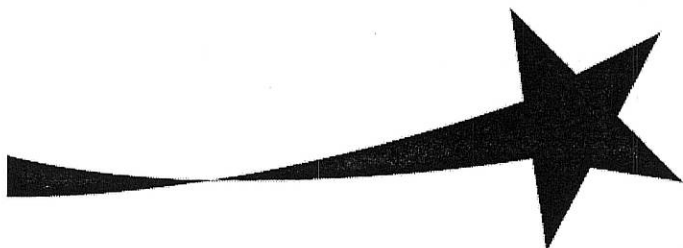
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Attachment 3



**KANSAS**

DEPARTMENT OF COMMERCE

David D. Kerr, Secretary

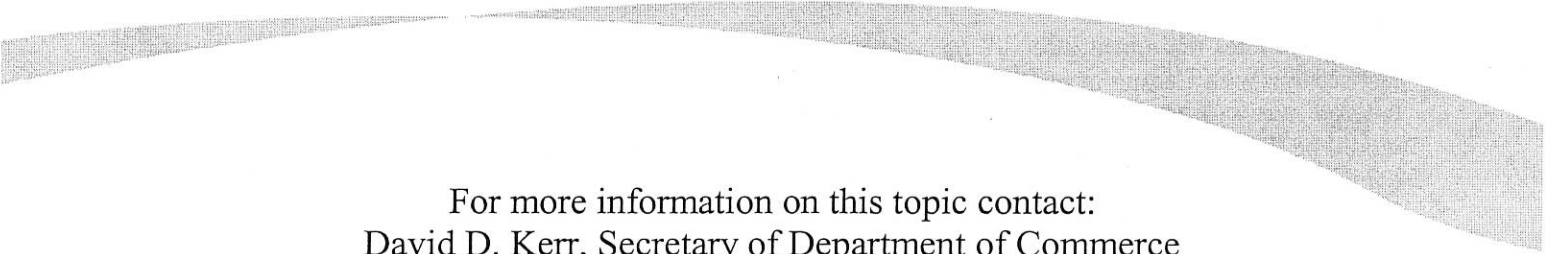


Testimony in support of SB 244

**Senate Committee on**

**Assessment and Taxation**

March 12, 2009



For more information on this topic contact:  
David D. Kerr, Secretary of Department of Commerce  
Phone: (785) 296-2741  
Fax: (785) 296-3665  
[www.kansascommerce.com](http://www.kansascommerce.com)

Senate Assessment & Taxation

3-12-09  
Attachment 4

**Testimony in support of SB 244  
Presented to the Senate Committee on  
Assessment and Taxation**

By Secretary David D. Kerr  
Kansas Department of Commerce  
March 12, 2009

Chairman Donovan and members of the Committee:

Thank you for the opportunity to express my support for SB 244.

The bill is an attempt to simplify the existing state Economic Revitalization and Reinvestment Act ("ERRA") and to make that act's benefits more accessible to Kansas businesses. Nearly all of the thresholds for qualifying for the benefits have been lowered in the bill, and the number of businesses interested in receiving the benefits will most assuredly grow. The bill lowers:

- The average annual gross compensation requirement from \$600 million to \$100 million;
- The historical capital investment requirement from \$1 billion to \$250 million; and
- The new capital investment requirement from \$500 million to \$250 million.

As you may know, the ERRA came onto the books in 2003 in response to the needs of Boeing. Last year the act was amended, largely in response to the needs of Cessna. As head of the primary economic development agency in the state, I welcome any meaningful tool that can be used to attract new business to Kansas. It is better to have a full and complete toolkit, one that allows us to fashion the most attractive package for each company.

But it may very well be time to re-evaluate the overall long-term statewide strategy for business recruitment and retention. There are currently at least four other bills under consideration by the Legislature that modify or create new economic development tools. While it is always good to have more than one tool, the presence of a large number of different programs creates confusion and frustration for companies that are considering new investment opportunities. Perhaps we should view this act more properly in the context of the overall statewide strategy. In the fast-paced, highly charged atmosphere of modern site selection, it is critical that our strategy and incentives be consistent and comprehensive.

The bill deletes the entire category of "eligible aviation businesses," the same category that was crafted last session with Cessna in mind. I assume the intent of the bill, however, is that the agreement that was entered into with Cessna last year would remain in effect even though the language that gave rise to it would be deleted. In its current form, this bill closely mirrors the IMPACT program, except that this bill contains a minimum investment threshold and allows for a 20-year bonding provision, whereas the maximum bonding period for IMPACT is 10 years.

We applaud the bill's emphasis on greater accessibility to benefits for more companies and the bill's flexibility in also anticipating a company's future wages and capital investment. We feel that existing economic development tools can always be improved, and we look forward to working with the Legislature to streamline and update the corresponding statutes.



## Testimony in Support of Senate Bill 244

Submitted by Dave Holtwick  
On behalf of the Overland Park Chamber of Commerce

Senate Assessment and Taxation Committee  
Thursday, March 12<sup>th</sup>, 2009

Chairman Donovan and Committee Members:

My name is Dave Holtwick and I am Vice President of Government Affairs with the Overland Park Chamber of Commerce. I am appearing today on behalf of our board of directors and our nearly 900 member companies. I appreciate the opportunity to share testimony with you today in support of Senate Bill 244 which expands the usability of the Economic Revitalization and Reinvestment Act.

Efforts to recruit new businesses to our area and to maintain the businesses already here have grown increasingly more difficult. With our current economic situation, simple changes like this will greatly assist our economic development efforts. I believe this would help Kansas reduce the competitive disadvantage we currently face with other states, especially for large scale projects.

Currently, this act is very limited in scope, applying only to eligible aviation businesses. This legislation would expand the program to apply to any company in any industry sector that meets minimum thresholds. I testified in favor of SB 108 that would expand the current law to also include solar and wind equipment manufacturers but I would like to see the program opened up to other qualified businesses. The changes recommended would not preclude the aviation industry or any industry from receiving these incentives, provided they meet job creation and/or investment thresholds required by the legislation.

SB 244 would make the law more general, encouraging new investment in the State and eliminating the need for companies to approach the legislature each year when expansion and/or relocation decision timelines are short. A decision could easily be required when the legislature is not in session. I believe SB 244 makes more sense than requiring new legislation every time a new potential industry is identified. Why should we constantly do special legislation for one company or industry when we could have a law to incent business expansion and relocation that is more universally applicable?


In summary, I believe changing this legislation would provide additional opportunities for companies ready and willing to invest in Kansas. Thank you very much for your time today. I encourage you to support Senate Bill 244.

9001 W. 112<sup>th</sup> St.

t: 913 Senate Assessment & Taxation

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Attachment 5

# FISCAL FOCUS

Budget and Tax Policy in  Perspective

April Holman  
Director of Economic Policy  
Kansas Action for Children  
Senate Committee on Assessment and Taxation  
March 12, 2009

Good morning, Chairman Donovan and members of the Committee. On behalf of Kansas Action for Children (KAC) I would like to thank you for this opportunity to testify in opposition to Senate Bill 244.

Kansas Action for Children is a not-for-profit child advocacy organization founded in 1979. For more than 30 years, KAC has worked with lawmakers on policy solutions that improve the lives of Kansas children and their families.

Our opposition to Senate Bill 244 is a reflection of our general concern about the erosion of the Kansas tax base. The individual income tax is a key source of revenue to the State General Fund (SGF), which is in turn a key source of funding for state government and for programs and services vital to children and families. Senate Bill 244 significantly reduces the investment that a business is required to make to qualify for state funding through the Economic Revitalization and Reinvestment Act. This act allows a business to use income tax withholding from its employees to pay off bonds for a special project. In the past this financing mechanism has only been allowed in the case of businesses making exceptionally large investments in the state. The bill significantly reduces the investment required to qualify for the income tax financing both in terms of the compensation the business provides to its employees and its investments in property and equipment. Senate Bill 244 will erode individual income tax receipts and result in a significant reduction in SGF revenues.

The budget shortfall that we face in Kansas is not entirely a function of a struggling economy. We know that our state's current tax structure is no longer keeping pace with public infrastructure costs. Although major components of the Kansas tax structure have been in place for quite some time, the strength of our tax policy has eroded little by little through legislative action each year. In the past four years alone, tax cuts including the elimination of the estate tax and the franchise tax and the passage of several sales tax exemptions has resulted in a State General Fund revenue reduction of almost \$150 million in this fiscal year alone. This cut in the tax base grows to \$180 million dollars in fiscal year 2010.

In a year when agency budgets are being cut at an unprecedented rate, the State of Kansas cannot afford to adopt legislation that will further erode the Kansas tax base. For this reason we urge your opposition to Senate Bill 244.

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Testimony to the Senate Committee on Assessment and Taxation

Joan Wagnon

March 12, 2009

**Department Concerns with Senate Bill 244**

Senator Donovan, Chair, and Members of the Committee:

Senate Bill 244 significantly broadens the provisions of the “economic revitalization and reinvestment act,” K.S.A. 2008 Supp. 74-50,136. The qualification requirements that the eligible business and project be in aviation, the business has paid at least \$300 million in Kansas annual compensation, invested at least \$500 million in real assets in Kansas, is in the manufacturing or service sector and proposes an aviation project involving \$500 million investment and up to 4,000 new employees, are eliminated. The eligible business must have paid (or will pay) at least \$100 million in Kansas compensation, \$50,000 average annual compensation per employee, invested (or will invest) at least \$250 million in real assets in Kansas, and proposes to invest \$250 million in an eligible project and employee up to 2,000 employees in Kansas. The project is to be financed by Kansas Development Finance Authority (K DFA) 20-year bonds, with the principal and interest to be paid from employer withholding taxes from the eligible business.

Our fiscal note is attached and is based on the assumption of one qualifying project, employing 2000 employees at \$50,000 annual salary each, with pledging of employer withholding taxes to pay off 20-year bonds of \$100 million in principal at 4% interest. As the fiscal note indicates, the employer withholding taxes generated from this amount of payroll (\$5 million per year) would be insufficient to service the bonds (\$7.35 million needed per year). We are not aware of a specific company or project for which this proposal is intended. Senate Bill 244 resembles recent legislation intended for specific projects, beginning with Goodyear, then Boeing, Innovia, Eaton, and Cessna, providing for the pledge of employer withholding tax revenues from those companies to pay off bonds issued to finance certain projects.

A business already located in Kansas and looking to expand its operations or a business looking to locate in Kansas could take advantage of this proposal. The definition of “eligible project” in Section 4 leaves unclear whether an “eligible business” must actually add any new jobs, or if so, how many new jobs. The bill only provides that the business must “employ up to 2000 employees.” Can a business that currently employs 2000 people in Kansas qualify for this proposal, even if the project investment results in no new job creation? If so, several large manufacturing firms located in Kansas could

possibly qualify for this proposal—without adding any new jobs, or minimally adding jobs. Incentive programs such as this would not be the sole reason why a business decides to locate in Kansas or expand its existing presence. The business's prospects for economic growth must be sufficient to justify the expansion. The tax incentive is more likely to be a secondary consideration.

Employer withholding tax is a vital component of the State's individual income tax base and currently makes up about 66% of individual income tax receipts. About 50% of State General Fund tax receipts consist of individual income tax. Five years ago, employer withholding tax made up about 72% of individual income tax receipts, and as a result of the legislative trend to divert more and more employer withholding tax revenue for specific projects, that percentage has been shrinking each year. During an economic downturn, such as we are currently experiencing, the loss of employer withholding tax revenue can be devastating. To balance the FY 09 budget, transfers of employer withholding tax revenues dedicated to the Bioscience Fund under the Bioscience Act (the annual growth in withholding from 2003 for Bioscience companies and university employees involved in Bioscience) will be reduced, and transfers for FY 10 will most likely need to be reduced as well. Since FY 06, over \$110 million in employer withholding tax revenues have been transferred to the Bioscience Fund. These types of revenue diversions shrink the tax base to the point where necessary State funding can be jeopardized. Senate Bill 244 will exacerbate that trend.

When the Consensus Revenue Estimating Group meets twice a year to forecast the State General Fund tax receipts for the current and next fiscal year, economic growth trends are factored in. As the State's economy grows, businesses increase investment, income and hiring, and tax receipts respond positively. When the economy shrinks, businesses lay people off, stop investment projects, and tax receipts go down. When the State's economy does turn around, proposals such as Senate Bill 244 can potentially divert withholding tax revenue growth that the State would otherwise use to satisfy the ever-growing demand for State services. Expected employer withholding tax growth has traditionally been one of the reasons why a State would provide incentives to a business to expand in or move to the State. Senate Bill 244 would deny the State that source of revenue growth.

The Department supports giving the Secretary of Commerce the flexibility to offer cash incentives to companies to come to Kansas—but this must be accomplished without threatening future employer withholding tax revenue growth.