

MINUTES OF THE HOUSE TAXATION COMMITTEE

The meeting was called to order by Chairman Richard Carlson at 9:12 a.m. on February 10, 2010, in Room 783 of the Docking State Office Building.

All members were present.

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  
Brandon Riffel, Kansas Legislative Research Department  
Marla Morris, Committee Assistant

There were no conferees appearing before the Committee.

Others attending:

See attached list.

There were no bill introductions.

Discussion and possible action on:

**HB 2521 - Electronic filing of tax returns, reports and other documents**

Staff Chris Courtwright, Kansas Legislative Research Department, summarized **HB 2521**. The bill was requested for introduction in the Committee by the Kansas Department of Revenue and includes requiring electronic filing of returns under certain circumstances and giving the Department authority to require electronic filing when annual liability of sales tax is in excess of \$25,000, proposal of a \$25 fee for tax payers paper filing, and \$5 fees for filers requesting refunds in the form of paper checks rather than direct deposits. Also included in **HB 2521** is the proposal to move administration of intangibles tax from the Kansas Department of Revenue to local county clerk levels. He stood for questions.

Representative Menghini moved to pass **HB 2521** out of Committee favorably with amendments. The motion was seconded by Representative Hawk.

Representative Menghini moved to adopt a balloon amendment to **HB 2521**. The motion was seconded by Representative Hawk.

Discussion on the amendment followed. The amendment strikes all parts of the bill except intangibles tax provisions, requirement to file sales tax returns and withholding tax returns electronically (Attachment 1). The amendment removes fee requirements.

Secretary Joan Wagon, Kansas Department of Revenue supplied answers to questions concerning the role of local county clerk offices pertaining to the filing of intangible taxes. She explained the fiscal advantage to the Department with the requirement of electronic filing. Secretary Wagon presented a chart demonstrating the number of returns filed in 2009 by form type, and income (Attachment 2). She stood for questions.

Representative Menghini closed on the amendment and moved to adopt the revised version and allow Revisor Self to create a substitute bill. The motion carried.

Representative Menghini moved to pass out **HB 2521** favorably as amended. The motion carried. Representatives Siegfried and Powell requested their vote in opposition to the main motion be recorded.

Discussion and possible action on:

**HB 2538 - Amendments to the promoting employment across Kansas act.**

CONTINUATION SHEET

Minutes of the House Taxation Committee at 9:00 a.m. on February 10, 2010, in Room 783 of the Docking State Office Building.

Representative Kleeb moved to recommend **HB 2538** passed favorably out of committee. The motion was seconded by Representative Wolf.

Representative Kleeb distributed correspondence from Secretary of Commerce, William Thornton, in support of **HB 2538**, (Attachment 3).

Representative Kleeb introduced Jeff Conway, Counsel for the Secretary of Commerce. Mr. Conway summarized the proposed amendments to **HB 2538** (Attachment 4).

Representative Kleeb moved the amendment to **HB 2538**. The second was made by Representative Wolf.

Representative Kleeb and Steve Kelly, Department of Commerce, stood for questions on the proposed amendments to **HB 2538**. Representative Kleeb distributed an Impact and Peak Economic Development Program comparison chart for review by the Committee (Attachment 5).

Representative Kleeb moved on the amendment. The motion carried. Representative Frownfelter requested his vote in opposition be recorded.

Representative Menghini presented a proposal to amend **HB 2538** requiring companies to pay 100 percent of health care (Attachment 6).

Representative Menghini moved for an amendment requiring companies pay 100 percent of health care cost if using median rather than average wages. The motion was seconded by Representative Frownfelter. Discussion was held on the amendment proposal. Representative Menghini moved on the amendment. The motion failed.

Representative Benlon moved for an amendment to lower the amount of withholding taxes allowed to be retained by qualified companies from 95 percent to 70 percent. The motion was seconded by Representative Frownfelter.

Representative Kleeb distributed an economic benefit analysis he said he prepared after consulting with Chris Courtright, Kansas Legislative Research Department, regarding a summary of information prepared by Dr. Art Hall (Attachment 7). Representative Kleeb spoke in opposition to a 70 percent admendment.

Representative Benlon moved the amendment to lower the percentage. The motion failed.

Representative Kleeb moved to recommend **HB 2538** passed favorably out of committee. The motion carried.

Chairman Carlson instructed Revisor Self to create a substitute bill for **HB 2538**.

The next meeting is scheduled for February 11, 2010.

The meeting was adjourned at 10:44 a.m.



Strike all parts of the bill except:

intangibles tax provisions

requirement to file sales tax returns electronically

"

"

withholding tax returns

"

Session of 2010

## HOUSE BILL No. 2521

By Committee on Taxation

1-22

9 AN ACT concerning taxation; relating to electronic filing of returns, re-  
10 ports or other documents, fees and penalties; credits, disallowance;  
11 intangibles tax, filing procedure; amending K.S.A. 12-1,104 and K.S.A.  
12 2009 Supp. 75-5151, 75-5151a, 79-3220, 79-3298, 79-32,105, 79-3607  
13 and 79-3609 and repealing the existing sections.  
14

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

16 Section 1. K.S.A. 12-1,104 is hereby amended to read as follows: 12-  
17 1,104. (a) Every taxpayer receiving earnings which are taxable under the  
18 provisions of this act shall file a return on or before July 1 in the year  
19 ~~1983~~ April 15 following the taxable year, with the county clerk of the  
20 county in which the gross earnings has acquired situs and on or before  
21 April 15 of each year thereafter with the director of taxation of the state  
22 department of revenue. Such return shall contain such information and  
23 be made upon forms prescribed and provided by the director of taxation  
24 and provided by the county clerk. On or before June 30 of each year, the  
25 director of taxation shall certify to the county clerk of each county the  
26 amount of taxable earnings received by each taxpayer during the taxable  
27 year of the taxpayer ending in the preceding calendar year. The county  
28 clerk shall compute the tax due and payable on such taxable earnings of  
29 each taxpayer and shall certify such amount to the county treasurer. The  
30 director of taxation shall include forms prescribe to the county clerk the  
31 form for the making of such return and a current listing of each taxing  
32 subdivision imposing a tax on gross earnings derived from money, notes  
33 and other evidence of debt for which the listing has been received pur-  
34 suant to subsection (d) of K.S.A. 12-1,101 by July 15 of the year preceding  
35 the year of imposition of the tax with each state income tax return dis-  
36 tributed by the state department of revenue.

37 (b) A return listing the gross earnings of every resident conservatee  
38 which are taxable pursuant to this act shall be filed by the conservator of  
39 such conservatee. The return of every resident minor shall be filed by the  
40 minor's father, if living and of sound mind, but if such father is not living  
41 or is an incapacitated person, by the minor's mother or if neither the  
42 father or mother is living, by the person having possession or control of  
43 the minor's property.

House Taxation

Date: 2-10-10

Attachment: 1

1 A return listing the gross earnings of a resident trustee or cotrustee of  
2 a revocable trust created by a resident settlor which are taxable pursuant  
3 to this act shall be filed by the resident settlor. A return listing the gross  
4 earnings of a resident trustee or cotrustee of an irrevocable or testamen-  
5 tary trust created by a resident settlor or a resident decedent which are  
6 taxable pursuant to this act shall be filed by any beneficiary residing in  
7 this state who receives earnings from such trust, to the extent of such  
8 earnings, otherwise a return listing such gross earnings shall be filed by  
9 the resident trustee to the extent that such earnings are not distributed.  
10 A nonresident beneficiary shall not be obligated to file a return listing  
11 earnings taxable pursuant to this act nor shall the trustee be obligated to  
12 file a return listing the same to the extent they were distributed to a  
13 nonresident beneficiary. Where a resident trustee or cotrustee is acting  
14 under a revocable, irrevocable or testamentary trust of a nonresident set-  
15 tlor or nonresident decedent, the trustee shall not be required to file a  
16 return listing earnings taxable pursuant to this act, but any beneficiary of  
17 such trust, residing in this state, who receives or is entitled to receive  
18 such earnings from such trust shall be required to file a return. Any res-  
19 ident of this state including the settlor of a revocable trust who receives  
20 or is entitled to receive earnings taxable pursuant to this act from a trust,  
21 not having a situs in this state, shall file a return listing such resident's  
22 share of such earnings.  
23 For the purposes of this act, a settlor of a revocable trust shall be  
24 deemed to be entitled to the gross earnings on money, notes and other  
25 evidence of debt of such trust whether or not such settlor actually receives  
26 the same and a beneficiary shall be deemed to be entitled to a share of  
27 such earnings if all or a specific part or percentage of the net income of  
28 the trust must be distributed to such beneficiary or if the beneficiary may  
29 withdraw all or a specific part of the net income. If such beneficiary may  
30 receive earnings only on the exercise of discretion by the trustee or on  
31 the occurrence of an event outside of the beneficiary's sole control such  
32 beneficiary shall not be deemed to have received the earnings and shall  
33 file a return listing only earnings actually received. If earnings of a trust  
34 which are taxable pursuant to this act are accumulated and subsequently  
35 distributed in a different calendar year than the year in which received  
36 by the trust and if the same are reported as income under the revenue  
37 laws of Kansas and regulations promulgated thereunder, and if a return  
38 listing such earnings has not been filed by the trustees in the year in  
39 which earned, then a return listing such earnings shall be filed by such  
40 beneficiary in the year in which the same are reported under the revenue  
41 laws of Kansas, but otherwise a return listing the same shall not be filed.  
42 Where the beneficiary of any trust is required to file a return listing  
43 earnings which are taxable pursuant to this act and which are held in

not to be used  
as a  
Attachment

1 trust, such beneficiary for purposes of this act shall be deemed to have  
2 received or to be entitled to receive such beneficiary's pro rata share of  
3 the earnings without specific allocation, unless the trust provides other-  
4 wise, and based upon the proportion which the beneficiary's share of the  
5 earnings bears to the total earnings of the trust. A return listing gross  
6 earnings taxable under this act which belong to the estate of a resident  
7 decedent shall be filed by the executor or administrator. If the decedent  
8 is a nonresident, such executor or administrator shall not be required to  
9 file a return listing such gross earnings.

10 A return listing the gross earnings of persons, companies or corpora-  
11 tions which are taxable pursuant to this act, whose assets are in the hands  
12 of receivers shall be filed by such receivers and a return listing the gross  
13 earnings belonging to a corporation, and subject to this act, shall be filed  
14 by some person designated for that purpose by such corporation.

15 A return listing the gross earnings which are taxable pursuant to this  
16 act which belong to a corporation, association or a partnership shall be  
17 listed by an agent or partner. Unless subject to tax by reason of K.S.A.  
18 12-1,103, *and amendments thereto*, no return listing the gross earnings  
19 from money, notes and other evidence of debt collected or received by  
20 any agent or representative of any person, company, or corporation, which  
21 is to be transmitted immediately to such person, company or corporation,  
22 shall be filed by such agent or representative, but such agent or repre-  
23 sentative shall, upon request, *shall* state under oath the amount of such  
24 money or credits and ~~to whom the same has the person, company or~~  
25 ~~corporation to whom such money or credits have been or is to be~~  
26 transmitted.

27 Taxes levied pursuant to this act shall be paid by the person or fiduciary  
28 required to file such return.

~~29 Sec. 2. K.S.A. 2009 Supp. 75-5151 is hereby amended to read as~~  
30 follows: 75-5151. The secretary of revenue may require, consistent with  
31 sound cash management policies, that any taxpayer whose total sales tax  
32 liability exceeds ~~\$45,000~~ \$25,000 in any calendar year, any taxpayer whose  
33 total withholding tax liability exceeds ~~\$45,000~~ \$25,000 in any calendar  
34 year, and any person owing any taxes or fees in connection with any  
35 return, report or document other than for sales tax or withholding tax  
36 liability, shall remit their tax liability by electronic funds transfer no later  
37 than the date required for such remittance except that the secretary may  
38 adopt rules and regulations prescribing alternative filing and payment  
39 dates not later than the last day of the month in which the tax was oth-  
40 erwise due. Electronic funds transfers may be made by wire transfers of  
41 funds through the federal reserve system or by any other means estab-  
42 lished by the secretary, with the approval of the state treasurer, which  
43 insures the availability of such funds to the state on the date of payment.

~~1 Evidence of such payment shall be furnished to the secretary on or before  
2 the due date of the tax as established by law. Failure to timely make such  
3 payment in immediately available funds or failure to provide such evi-  
4 dence of payment in a timely manner shall subject the taxpayer to penalty  
5 and interest as provided by law for delinquent or deficient tax payments.  
6 All sales and use tax remittances from model 1, 2 and 3 sellers must be  
7 remitted electronically. Any data that accompanies a remittance must be  
8 formatted using uniform tax type and payment type codes approved by  
9 the secretary.~~

~~10 Sec. 3. K.S.A. 2009 Supp. 75-5151a is hereby amended to read as  
11 follows: 75-5151a. (a) Subject to the requirements specified in K.S.A. 79-  
12 3220, and amendments thereto, the secretary of revenue may require a  
13 paid preparer or any person required to file a tax return to file some or  
14 all of the tax returns by electronic means whenever the department of  
15 revenue permits electronic filing.  
16 (b) As used in this act: (1) "Electronic means" means computer gen-  
17 erated electronic or magnetic media, *teletype*, web based applications or  
18 similar electronic, magnetic or computer based methods or applications;  
19 (2) "paid preparer" means any person or business that prepares tax  
20 returns for compensation or employs or authorizes one or more persons  
21 to prepare such returns. The number of returns prepared per year shall  
22 be determined by including all returns prepared by the person or busi-  
23 ness, and by all employees or agents of the person or business, whether  
24 prepared at one location or multiple locations; and  
25 (3) "tax returns" means returns or reports filed for any tax adminis-  
26 tered by the department of revenue including, but not limited to, income  
27 tax, *withholding tax*, sales and use tax, motor fuel tax, mineral tax and  
28 other excise taxes.  
29 (c) The provisions of this section shall be effective on and after July  
30 1, 2008 2010.~~

~~31 Sec. 4. K.S.A. 2009 Supp. 79-3220 is hereby amended to read as  
32 follows: 79-3220. (a) (1) Each individual required to file a federal income  
33 tax return and any other individual whose gross income exceeds the sum  
34 of such individual's applicable Kansas standard deduction amount and  
35 Kansas personal exemption amount shall each make and sign a return or  
36 statement stating specifically such items as are required by the forms and  
37 rules and regulations of the secretary of revenue. If any individual is  
38 unable to make a return, the return shall be made by a duly authorized  
39 agent or by the guardian or other person charged with the care of the  
40 person or property of such taxpayer. Notwithstanding any provision of  
41 the Kansas income tax act to the contrary, all individuals not required to  
42 file a Kansas income tax return hereunder shall not be liable for any tax  
43 imposed pursuant to such act.~~

- 1 (2) In accordance with the provisions of K.S.A. 2009 Supp. 75-5151a,  
2 and amendments thereto, an individual who is required to file a return  
3 ~~may eligible for electronic filing shall~~ file such return by electronic means  
4 in a manner approved by the secretary of revenue. A paid preparer who  
5 prepares 50 or more returns per year shall file by electronic means not  
6 less than 90% of such returns eligible for electronic filing. The require-  
7 ments of this subsection may be waived by the secretary of revenue for  
8 a paid preparer if the paid preparer demonstrates a hardship in complying  
9 with the requirements of this subsection.
- 10 (b) Every corporation subject to taxation under this act, including,  
11 but not limited to, all farmers, fruit growers, or like associations organized  
12 and operated on a cooperative basis, except electric cooperative exclu-  
13 sively engaged in the manufacture or distribution of electric power for  
14 their members, shall make a return, or statement, stating specifically such  
15 items as may be required by the forms and regulations of the secretary  
16 of revenue. The return shall be signed by the president, vice-president,  
17 treasurer, assistant treasurer, chief accounting officer, or any other officer  
18 so authorized to act. The fact that an individual's name is signed on a  
19 return shall be prima facie evidence that such individual is authorized to  
20 sign such return on behalf of such corporation. In cases where receivers,  
21 trustees in bankruptcy or assignees are operating the property or business  
22 of corporations, such receivers, trustees, or assignees shall make returns  
23 for such corporations in the same manner and form as corporations are  
24 required to make returns. Any tax due on the basis of such returns shall  
25 be collected in the same manner as if collected from the corporation for  
26 which the return is made. ~~Any corporation that is required to make a~~  
27 ~~return eligible for electronic filing pursuant to this subsection shall file~~  
28 ~~such return by electronic means in the manner approved by the secretary~~  
29 ~~of revenue.~~
- 30 (c) Every fiduciary, except a receiver appointed by authority of law  
31 in possession of part only of the property of an individual shall make and  
32 sign a return for each of the individuals, estates, or trusts for which the  
33 fiduciary acts, when such returns are required by the provisions of this  
34 act, stating specifically such items as may be required by the forms and  
35 regulations of the secretary of revenue. In the case of joint fiduciaries,  
36 whether residents or nonresidents, a return may be made by any one and  
37 shall be sufficient compliance with the above requirements. Any fiduciary  
38 required to make a return under this act shall be subject to all of the  
39 provisions of law which apply to individuals.
- 40 (d) Every partnership shall make a return for each taxable year, stat-  
41 ing, specifically such items as may be required by the forms and regula-  
42 tions of the secretary of revenue. The returns shall be signed by any one  
43 of the partners.



~~1 (e) Any individual or corporation required to file a return eligible for  
2 electronic filing pursuant to this section, filing a return other than by  
3 electronic means in the manner approved by the secretary of revenue shall  
4 be assessed a service fee of \$25, which fee shall be deposited in the division  
5 of taxation processing fund. Nonpayment of such fee shall be subject to  
6 penalties and interest pursuant to K.S.A. 79-3228, and amendments  
7 thereto.~~

8 Sec. 5. K.S.A. 2009 Supp. 79-3298 is hereby amended to read as  
9 follows: 79-3298. (a) Every employer, payer, person or organization de-  
10 ducting and withholding tax shall remit the taxes and file returns in ac-  
11 cordance with the following provisions:

12 (1) Whenever the total amount withheld exceeds \$100,000 in any  
13 calendar year, the employer, payer, person or organization deducting and  
14 withholding tax shall remit the taxes withheld in accordance with the  
15 following schedule: Each calendar month shall be divided into four re-  
16 mittance periods that end on the 7th, 15th, 21st and the last day of such  
17 month. If at the end of any one or all of such remittance periods the total  
18 undeposited taxes equal or exceed \$667, the taxes shall be remitted within  
19 three banking days. Saturdays, Sundays and legal holidays shall not be  
20 treated as banking days.

21 (2) Whenever the total amount withheld exceeds \$8,000 but does not  
22 exceed \$100,000 in any calendar year, the employer, payer, person or  
23 organization deducting and withholding tax shall remit the taxes withheld  
24 for wages paid during the first 15 days of any month on or before the  
25 25th day of the month. The employer, payer, person or organization de-  
26 ducting and withholding tax shall remit the taxes withheld for wages paid  
27 during the remainder of that month on or before the 10th day of the  
28 following month.

29 (3) Whenever the total amount withheld exceeds \$1,200 but does not  
30 exceed \$8,000 in any calendar year, the employer, payer, person or or-  
31 ganization deducting and withholding tax shall remit the taxes withheld  
32 during any month on or before the 15th day of the following month.

33 (4) Whenever the total amount withheld exceeds \$200 but does not  
34 exceed \$1,200 in any calendar year, the employer, payer, person or or-  
35 ganization deducting and withholding tax shall remit the taxes withheld  
36 in any calendar quarter on or before the 25th day of the first month  
37 following the end of that calendar quarter.

38 (5) Whenever the total amount withheld does not exceed \$200 in any  
39 calendar year, the employer, payer, person or organization deducting and  
40 withholding tax shall remit the taxes withheld during that year on or be-  
41 fore January 25 of the following year.

42 (b) Each remittance required under the provisions of subsection (a)  
43 shall be accompanied by a Kansas withholding tax remittance form and

1 shall be filed in the manner prescribed ~~and furnished~~ by the director,  
2 including electronic filing. ~~Any employer, payer, person or organization~~  
3 ~~deducting and withholding tax required by the director to file a remittance~~  
4 ~~form by electronic means who files such remittance form other than by~~  
5 ~~electronic means in the manner approved by the director shall be assessed~~  
6 ~~a service fee of \$5 per remittance form, which fee shall be deposited in~~  
7 ~~the division of taxation processing fund. Nonpayment of such fee shall be~~  
8 ~~subject to penalties and interest pursuant to K.S.A. 79-3228, and amend-~~  
9 ~~ments thereto.~~

10 (c) Every employer, payer, person or organization deducting and  
11 withholding tax and making remittances pursuant to subsection (a) shall  
12 file a return on a form ~~or in the format and shall file in the manner~~  
13 ~~prescribed and furnished~~ by the director, including electronic filing, for  
14 each calendar year on or before the last day of February of the following  
15 year. ~~Any employer, payer, person or organization deducting and with-~~  
16 ~~holding tax required by the director to file a return by electronic means~~  
17 ~~who files such return other than by electronic means in the manner ap-~~  
18 ~~proved by the director shall be assessed a service fee of \$5 per return,~~  
19 ~~which fee shall be deposited in the division of taxation processing fund.~~  
20 ~~Nonpayment of such fee shall be subject to penalties and interest pursuant~~  
21 ~~to K.S.A. 79-3228, and amendments thereto.~~

22 (d) The excess of any remittance over the actual taxes withheld in any  
23 withholding period shall be credited against the liability for following  
24 withholding periods until exhausted. A refund shall be allowed in accord-  
25 ance with K.S.A. 79-32,105, and amendments thereto, where an over-  
26 payment cannot be adjusted by an offset against the liability for a sub-  
27 sequent withholding period. ~~Any person filing a return electronically and~~  
28 ~~entitled to a refund payment from the department of revenue shall provide~~  
29 ~~to the department the information, as determined by the secretary, nec-~~  
30 ~~essary to enable the department to pay such refund to such person in~~  
31 ~~electronic form by direct deposit. Any person failing to provide such in-~~  
32 ~~formation or refusing to accept such refund payment by direct deposit in~~  
33 ~~electronic form shall be assessed a service fee of \$5, which fee shall be~~  
34 ~~deposited in the division of taxation processing fund.~~

35 (e) For purposes of determining filing requirements, determinations  
36 of amounts withheld during a calendar year by employers, payers, persons  
37 or organizations deducting and withholding tax shall be made by the di-  
38 rector upon the basis of amounts withheld by those employers, payers,  
39 persons or organizations during the preceding calendar year or by esti-  
40 mates in cases of employers, payers, persons or organizations having no  
41 previous withholding histories. The director is hereby authorized to mod-  
42 ify the filing schedule for any employer, payer, person or organization  
43 deducting and withholding tax when it is apparent that the original de-

1 termination was inaccurate.

2 (f) Whenever the director has cause to believe that money withheld  
3 by an employer, payer, person or organization deducting and withholding  
4 tax pursuant to this act may be converted, diverted, lost, or otherwise not  
5 timely paid in accordance with this section, the director shall have the  
6 power to require returns and payment from any such employer, payer,  
7 person or organization at any time at more frequent intervals than pre-  
8 scribed by this section in order to secure full payment to the state of all  
9 amounts withheld by such employer, payer, person or organization in  
10 accordance with this act.

11 ~~Sec. 6. K.S.A. 2009 Supp. 79-32,105 is hereby amended to read as~~  
12 follows: 79-32,105. (a) The director shall remit the entire amount col-  
13 lected under the provisions of this act and from the income tax imposed  
14 upon individuals, corporations, estates or trusts pursuant to the "Kansas  
15 income tax act" less amounts withheld as provided in subsection (b) and  
16 any amounts credited to the IMPACT program repayment fund or the  
17 IMPACT program services fund under K.S.A. 74-50,107 and amend-  
18 ments thereto to the state treasurer in accordance with the provisions of  
19 K.S.A. 75-4215, and amendments thereto. Upon receipt of each such  
20 remittance, the state treasurer shall deposit the entire amount in the state  
21 treasury to the credit of the state general fund.

22 (b) A revolving fund, designated as "income tax refund fund" not to  
23 exceed \$4,000,000 shall be set apart and maintained by the director from  
24 income tax collections, franchise tax collections, withholding tax collec-  
25 tions, and estimated tax collections and held by the state treasurer for  
26 prompt payment of all income tax refunds and franchise tax refunds, for  
27 the payment of interest as provided in subsection (e), for payment of  
28 homestead property tax refunds in accordance with the homestead prop-  
29 erty tax refund act and for payment of property tax refunds allowed pur-  
30 suant to the provisions of K.S.A. 2009 Supp. 79-255, and amendments  
31 thereto. The fund shall be in such amount, within the limit set by this  
32 section, as the director determines is necessary to meet current refunding  
33 requirements under this act.

34 (c) If the director discovers from the examination of the return, or  
35 upon claim duly filed by the taxpayer or upon final judgment of the court  
36 that the income tax, withholding tax, declaration of estimated tax or any  
37 penalty or interest paid by or credited to any taxpayer is in excess of the  
38 amount legally due for such tax or any other tax owed the state of Kansas,  
39 the director shall certify to the director of accounts and reports the name  
40 of the taxpayer, the amount of refund and such other information as the  
41 director may require. Upon receipt of such certification the director of  
42 accounts and reports shall issue a warrant on the state treasurer for the  
43 payment to the taxpayer out of the fund provided in subsection (b), except

*Debit*

1 that no refund shall be made for a sum less than \$5, but such amount  
2 may be claimed by the taxpayer as a credit against the taxpayer's tax  
3 liability in the taxpayer's next succeeding taxable year. ~~When any credit~~  
4 ~~is claimed for an amount less than \$5, such credit shall not be allowed.~~  
5 ~~Any person filing a return electronically and entitled to a refund payment~~  
6 ~~from the department of revenue shall provide to the department the in-~~  
7 ~~formation, as determined by the secretary, necessary to enable the de-~~  
8 ~~partment to pay such refund to such person in electronic form by direct~~  
9 ~~deposit. Any person failing to provide such information or refusing to~~  
10 ~~accept such refund payment by direct deposit in electronic form shall be~~  
11 ~~assessed a service fee of \$10, which fee shall be deposited in the division~~  
12 ~~of taxation processing fund.~~

13 (d) When a resident taxpayer dies, and the director determines that  
14 a refund is due the claimant not in excess of \$100, the director shall certify  
15 to the director of accounts and reports the name and address of the  
16 claimant entitled to the refund and the amount of the refund. A refund  
17 may be made upon a claim duly made on behalf of the estate of the  
18 deceased or in the absence of any such claim upon a claim by a surviving  
19 spouse and if none upon the claim by any heir at law. Upon receipt of  
20 such certification the director of accounts and reports shall issue a warrant  
21 on the state treasurer for the payment to the claimant out of the fund  
22 provided in subsection (b).

23 (e) Interest shall be allowed and paid at the rate of 12% per annum  
24 upon any overpayment of the income tax imposed upon individuals, cor-  
25 porations, estates or trusts pursuant to the Kansas income tax act for any  
26 period prior to January 1, 1995, 6% per annum for the period commenc-  
27 ing on January 1, 1995, and ending on December 31, 1997, and at the  
28 rate prescribed and determined pursuant to K.S.A. 79-2968, and amend-  
29 ments thereto, for any period thereafter.

30 For the purposes of this subsection:

31 (1) Any return filed before the last day prescribed for the filing  
32 thereof shall be considered as filed on such last day, determined without  
33 regard to any extension of time granted the taxpayer;

34 (2) any tax paid by the taxpayer before the last day prescribed for its  
35 payment, any income tax withheld from the taxpayer during any calendar  
36 year and any amount paid by the taxpayer as estimated income tax for a  
37 taxable year shall be deemed to have been paid on the last day prescribed  
38 for filing the return for the taxable year to which such amount constitutes  
39 a credit or payment, determined without regard to any extension of time  
40 granted the taxpayer;

41 (3) if any overpayment of tax results from a carryback of a net oper-  
42 ating loss or net capital loss, such overpayment shall be deemed not to  
43 have been made prior to the close of the taxable year in which such net

1 operating loss or net capital loss arises. For purposes of this paragraph,  
 2 the return for the loss year shall not be deemed to be filed before claim  
 3 for such overpayment is filed;

4 (4) in the case of a credit, interest shall be allowed and paid from the  
 5 date of the overpayment to the due date of the amount against which the  
 6 credit is taken, except that if any overpayment of income tax is claimed  
 7 as a credit against estimated tax for the succeeding taxable year, such  
 8 amount shall be considered as a payment of the income tax for the suc-  
 9 ceeding taxable year, whether or not claimed as a credit in the return of  
 10 estimated tax for such succeeding taxable year, and no interest shall be  
 11 allowed or paid in such overpayment for the taxable year in which the  
 12 overpayment arises;

13 (5) in the case of a tax return which is filed after the last date pre-  
 14 scribed for filing such return, determined with regard to extensions, no  
 15 interest shall be allowed or paid for any period before the date on which  
 16 the return is filed;

17 (6) in the case of a refund, interest shall be allowed and paid from  
 18 the date of the overpayment to a date preceding the date of the refund  
 19 check by not more than 30 days, as determined by the director, whether  
 20 or not such refund check is accepted by the taxpayer after tender of such  
 21 check to the taxpayer, but acceptance of such check shall be without  
 22 prejudice to any right of the taxpayer to claim any additional overpayment  
 23 and interest thereon; and

24 (7) if any overpayment is refunded within two months after the last  
 25 date prescribed, or permitted by extension of time, for filing the return  
 26 of such tax, or within two months after the return was filed, whichever is  
 27 later, no interest shall be allowed or paid. For the purposes of this section,  
 28 an overpayment shall be deemed to have been refunded at the time the  
 29 refund check in the amount of the overpayment, plus any interest due  
 30 thereon, is deposited in the United States mail.

31 Sec. 7. K.S.A. 2009 Supp. 79-3607 is hereby amended to read as  
 32 follows: 79-3607. (a) Retailers shall make returns to the director at the  
 33 times prescribed by this section *in the manner prescribed by the director*  
 34 *including electronic filing* upon forms *or format* prescribed and furnished  
 35 by the director stating: (1) The name and address of the retailer; (2) the  
 36 total amount of gross sales of all tangible personal property and taxable  
 37 services rendered by the retailer during the period for which the return  
 38 is made; (3) the total amount received during the period for which the  
 39 return is made on charge and time sales of tangible personal property  
 40 made and taxable services rendered prior to the period for which the  
 41 return is made; (4) deductions allowed by law from such total amount of  
 42 gross sales and from total amount received during the period for which  
 43 the return is made on such charge and time sales; (5) receipts during the

1 period for which the return is made from the total amount of sales of  
2 tangible personal property and taxable services rendered during such pe-  
3 riod in the course of such business, after deductions allowed by law have  
4 been made; (6) receipts during the period for which the return is made  
5 from charge and time sales of tangible personal property made and tax-  
6 able services rendered prior to such period in the course of such business,  
7 after deductions allowed by law have been made; (7) gross receipts during  
8 the period for which the return is made from sales of tangible personal  
9 property and taxable services rendered in the course of such business  
10 upon the basis of which the tax is imposed. The return shall include such  
11 other pertinent information as the director may require. In making such  
12 return, the retailer shall determine the market value of any consideration,  
13 other than money, received in connection with the sale of any tangible  
14 personal property in the course of the business and shall include such  
15 value in the return. Such value shall be subject to review and revision by  
16 the director as hereinafter provided. Refunds made by the retailer during  
17 the period for which the return is made on account of tangible personal  
18 property returned to the retailer shall be allowed as a deduction under  
19 subdivision (4) of this section in case the retailer has theretofore included  
20 the receipts from such sale in a return made by such retailer and paid  
21 taxes therein imposed by this act. The retailer shall, at the time of making  
22 such return, pay to the director the amount of tax herein imposed, except  
23 as otherwise provided in this section. The director may extend the time  
24 for making returns and paying the tax required by this act for any period  
25 not to exceed 60 days under such rules and regulations as the secretary  
26 of revenue may prescribe. When the total tax for which any retailer is  
27 liable under this act, does not exceed the sum of \$80 in any calendar year,  
28 the retailer shall file an annual return on or before January 25 of the  
29 following year. When the total tax liability does not exceed \$3,200 in any  
30 calendar year, the retailer shall file returns quarterly on or before the  
31 25th day of the month following the end of each calendar quarter. When  
32 the total tax liability exceeds \$3,200 in any calendar year, the retailer shall  
33 file a return for each month on or before the 25th day of the following  
34 month. When the total tax liability exceeds \$32,000 in any calendar year,  
35 the retailer shall be required to pay the sales tax liability for the first 15  
36 days of each month to the director on or before the 25th day of that  
37 month. Any such payment shall accompany the return filed for the pre-  
38 ceding month. A retailer will be considered to have complied with the  
39 requirements to pay the first 15 days' liability for any month if, on or  
40 before the 25th day of that month, the retailer paid 90% of the liability  
41 for that fifteen-day period, or 50% of such retailer's liability in the im-  
42 mediate preceding calendar year for the same month as the month in  
43 which the fifteen-day period occurs computed at the rate applicable in

1 the month in which the fifteen-day period occurs, and, in either case, paid  
2 any underpayment with the payment required on or before the 25th day  
3 of the following month. Such retailers shall pay their sales tax liabilities  
4 for the remainder of each such month at the time of filing the return for  
5 such month. Determinations of amounts of liability in a calendar year for  
6 purposes of determining filing requirements shall be made by the director  
7 upon the basis of amounts of liability by those retailers during the pre-  
8 ceding calendar year or by estimates in cases of retailers having no pre-  
9 vious sales tax histories. The director is hereby authorized to modify the  
10 filing schedule for any retailer when it is apparent that the original de-  
11 termination was inaccurate. ~~Any retailer required by the director to file~~  
12 ~~a return by electronic means who files such return other than by electronic~~  
13 ~~means in the manner approved by the director shall be assessed a service~~  
14 ~~fee of \$5 per return, which fee shall be deposited in the division of taxation~~  
15 ~~processing fund. Nonpayment of such fee shall be subject to penalties and~~  
16 ~~interest pursuant to K.S.A. 79-3615, and amendments thereto.~~

17 (b) All model 1, model 2 and model 3 sellers are required to file  
18 returns electronically. Any model 1, model 2 or model 3 seller may submit  
19 its sales and use tax returns in a simplified format approved by the direc-  
20 tor. Any seller that is registered under the agreement, which does not  
21 have a legal requirement to register in this state, and is not a model 1,  
22 model 2 or model 3 seller, may submit its sales and use tax returns as  
23 follows: (1) Upon registration, the director shall provide to the seller the  
24 returns required;

25 (2) seller shall file a return anytime within one year of the month of  
26 initial registration, and future returns are required on an annual basis in  
27 succeeding years; and

28 (3) in addition to the returns required in subsection (b)(2), sellers are  
29 required to submit returns in the month following any month in which  
30 they have accumulated state and local sales tax funds for this state in the  
31 amount of \$1,600 or more.

32 ~~Sec. S. K.S.A. 2009 Supp. 79-3609 is hereby amended to read as~~  
33 ~~follows: 79-3609. (a) Every person engaged in the business of selling tan-~~  
34 ~~gible personal property at retail or furnishing services taxable in this state,~~  
35 ~~shall keep records and books of all such sales, together with invoices, bills~~  
36 ~~of lading, sales records, copies of bills of sale and other pertinent papers~~  
37 ~~and documents. Such books and records and other papers and documents~~  
38 ~~shall, at all times during business hours of the day, be available for and~~  
39 ~~subject to inspection by the director, or the director's duly authorized~~  
40 ~~agents and employees, for a period of three years from the last day of the~~  
41 ~~calendar year or of the fiscal year of the retailer, whichever comes later,~~  
42 ~~to which the records pertain. Such records shall be preserved during the~~  
43 ~~entire period during which they are subject to inspection by the director,~~

1 assessment of tax or for the filing of a claim for refund, at any time prior  
2 to the expiration of the period of limitations. The period so agreed upon  
3 may be extended by subsequent agreements in writing made before the  
4 expiration of the period previously agreed upon. In consideration of such  
5 agreement or agreements, interest due in excess of 48 months on any  
6 additional tax shall be waived.

7 (d) Interest at the rate prescribed by K.S.A. 79-2968, and amend-  
8 ments thereto, shall be allowed on any overpayment of tax computed from  
9 the filing date of the return claiming the refund, except that no interest  
10 shall be allowed on any such refund if the same is paid within 120 days  
11 after the filing date of the return claiming the refund or the date of  
12 payment, whichever is later, provided that such return or refund claim  
13 satisfies the requirements specified by K.S.A. 2009 Supp. 79-3693, and  
14 amendments thereto, at the time the return or refund claim is received.  
15 ~~Any person filing a return electronically and entitled to a refund payment~~  
16 ~~from the department of revenue shall provide to the department the in-~~  
17 ~~formation, as determined by the secretary, necessary to enable the de-~~  
18 ~~partment to pay such refund to such person in electronic form by direct~~  
19 ~~deposit. Any person failing to provide such information or refusing to~~  
20 ~~accept such refund payment by direct deposit in electronic form shall be~~  
21 ~~assessed a service fee of \$5, which fee shall be deposited in the division of~~  
22 ~~taxation processing fund.~~

23 (e) Notwithstanding any other provision of this section or the provi-  
24 sions of the Kansas compensating tax act:

25 (1) (A) Any claim for refund of tax imposed by the Kansas retailers'  
26 sales tax act or the Kansas compensating tax act based upon the provisions  
27 of subsection (1k) of K.S.A. 79-3606 in existence prior to its amendment  
28 by this act which is without dispute shall be allowed, but, with respect to  
29 any claim exceeding \$10,000, the refund associated therewith shall not  
30 be paid until after 510 days from the date such claim was filed and shall  
31 not include interest from such date. As used in this subparagraph, a claim  
32 for refund without dispute shall not include any claim the basis for which  
33 is a judicial or quasi-judicial interpretation of such subsection occurring  
34 after the effective date of this act.

35 (B) Any refund of tax resulting from a final determination or adju-  
36 dication with regard to any claim submitted or to be submitted for refund  
37 of tax imposed by the Kansas retailers' sales tax act or the Kansas com-  
38 pensating tax act based upon the provisions of subsection (1k) of K.S.A.  
39 79-3606 in existence prior to its amendment by this act not described by  
40 subparagraph (A) shall, with respect to any refund exceeding \$50,000, be  
41 paid in equal annual installments over 10 years commencing with the year  
42 of such final determination or adjudication. Interest shall not accrue dur-  
43 ing the time period of such payment.



1 unless the director in writing previously authorizes their disposal. Any  
2 person selling tangible personal property or furnishing taxable services  
3 shall be prohibited from asserting that any sales are exempt from taxation  
4 unless the retailer has in the retailer's possession a properly executed  
5 exemption certificate provided by the consumer claiming the exemption,  
6 except as follows: (1) A retailer is relieved of liability for tax otherwise  
7 applicable if the retailer obtains a fully completed exemption certificate  
8 or captures the relevant data elements required by the director within 90  
9 days subsequent to the date of the sale; or (2) if the retailer has not  
10 obtained an exemption certificate or all relevant data elements, the re-  
11 tailer, within 120 days subsequent to a request for substantiation by the  
12 director, either may prove that the transaction was not subject to tax by  
13 other means or obtain a fully completed exemption certificate from the  
14 purchaser, taken in good faith. Otherwise, the sales shall be deemed to  
15 be taxable sales under this act.

16 (b) The amount of tax imposed by this act is to be assessed within  
17 three years after the return is filed, and no proceedings in court for the  
18 collection of such taxes shall be begun after the expiration of such period.  
19 In the case of a false or fraudulent return with intent to evade tax, the  
20 tax may be assessed or a proceeding in court for collection of such tax  
21 may be begun at any time, within two years from the discovery of such  
22 fraud. No assessment shall be made for any period preceding the date of  
23 registration of the retailer by more than three years except in cases of  
24 fraud. For any refund or credit claim filed after June 15, 2009, no refund  
25 or credit shall be allowed by the director after one year from the due date  
26 of the return for the reporting period as provided by K.S.A. 79-3607, and  
27 amendments thereto, unless before the expiration of such period a claim  
28 therefor is filed by the taxpayer, and, except as otherwise provided in  
29 K.S.A. 2009 Supp. 79-3694, and amendments thereto, no suit or action  
30 to recover on any claim for refund shall be commenced until after the  
31 expiration of six months from the date of filing such claim satisfying the  
32 requirements specified by K.S.A. 2009 Supp. 79-3693, and amendments  
33 thereto, therefor with the director. A refund claim shall not be deemed  
34 filed unless such claim is complete as required by K.S.A. 2009 Supp. 79-  
35 3693, and amendments thereto. For all mailed returns, including refund  
36 claims, each return or refund claim shall be presumed to have been filed  
37 with the department on the postmark date of such return or refund claim  
38 or if such date is illegible, the date three days prior to the date such return  
39 or refund claim is received.

40 (c) Before the expiration of time prescribed in this section for the  
41 assessment of additional tax or the filing of a claim for refund, the director  
42 is hereby authorized to enter into an agreement in writing with the tax-  
43 payer consenting to the extension of the periods of limitations for the

1 ~~(2) No claim for refund of tax imposed by the Kansas retailers' sales~~  
2 ~~tax act or the Kansas compensating tax act based upon the application of~~  
3 ~~the provisions of subsection (n) of K.S.A. 79-3606 pursuant to its inter-~~  
4 ~~pretation by the court of appeals of the state of Kansas in its opinion filed~~  
5 ~~on August 13, 1999, in the case entitled In re appeal of Water District~~  
6 ~~No. 1 of Johnson County shall be allowed for tax paid prior to the effective~~  
7 ~~date of this act. The provisions of this subsection shall not be applicable~~  
8 ~~to Water District No. 1 of Johnson county.~~  
9 ~~New Sec. 9. There is hereby created in the state treasury the division~~  
10 ~~of taxation processing fund. All moneys received by the director of taxa-~~  
11 ~~tion or secretary of revenue from fees and penalties pursuant to this act~~  
12 ~~shall be remitted to the state treasurer in accordance with the provisions~~  
13 ~~of K.S.A. 79-4215, and amendments thereto. Upon remittance of each~~  
14 ~~such remittance, the state treasurer shall deposit the entire amount in the~~  
15 ~~state treasury to the credit of the division of taxation processing fund. All~~  
16 ~~moneys credited to the division of taxation processing fund shall be used~~  
17 ~~by the department of revenue only for the purpose of funding techno-~~  
18 ~~logical improvements to tax processing systems. All expenditures from~~  
19 ~~the division of taxation processing fund shall be made in accordance with~~  
20 ~~appropriation acts, upon warrants of the director of accounts and reports~~  
21 ~~issued pursuant to vouchers approved by the secretary of revenue.~~  
22 Sec. 10. K.S.A. 12-1,104 and K.S.A. 2009 Supp. 75-5151, 75-5151a,  
23 79-3220, 79-3298, 79-32,105, 79-3607 and 79-3609 are hereby repealed.  
24 Sec. 11. This act shall take effect and be in force from and after its  
25 publication in the statute book.

**Kansas Department of Revenue  
Returns Filed in 2009 by KAGI bracket**

<u>KAGI bracket (all)</u>	<u>KDOR form</u>	<u>Vendor Form</u>	<u>Electronic</u>	<u>Total</u>	<u>Percent of Total</u>
Less than or equal to \$0	18,838	14,283	27,605	60,725	4.0%
\$0 - \$25,000	63,317	115,711	406,274	585,302	38.3%
\$25,000 - \$50,000	28,200	72,227	251,399	351,826	23.0%
\$50,000 - \$100,000	23,656	79,243	225,773	328,672	21.5%
\$100,000 - Over	9,990	67,536	124,949	202,475	13.2%
<b>Total</b>	<b>144,000</b>	<b>349,000</b>	<b>1,036,000</b>	<b>1,529,000</b>	<b>100.0%</b>

**Percent of Total Returns Filed**

<u>KAGI bracket (all)</u>	<u>KDOR form</u>	<u>Vendor Form</u>	<u>Electronic</u>	<u>Total</u>
Less than or equal to \$0	1.2%	0.9%	1.8%	4.0%
\$0 - \$25,000	4.1%	7.6%	26.6%	38.3%
\$25,000 - \$50,000	1.8%	4.7%	16.4%	23.0%
\$50,000 - \$100,000	1.5%	5.2%	14.8%	21.5%
\$100,000 - Over	0.7%	4.4%	8.2%	13.2%
<b>Total</b>	<b>9.4%</b>	<b>22.8%</b>	<b>67.8%</b>	<b>100.0%</b>

**Percent of Returns Filed in each KAGI bracket**

<u>KAGI bracket (all)</u>	<u>KDOR form</u>	<u>Vendor Form</u>	<u>Electronic</u>	<u>Total</u>
Less than or equal to \$0	31.0%	23.5%	45.5%	100.0%
\$0 - \$25,000	10.8%	19.8%	69.4%	100.0%
\$25,000 - \$50,000	8.0%	20.5%	71.5%	100.0%
\$50,000 - \$100,000	7.2%	24.1%	68.7%	100.0%
\$100,000 - Over	4.9%	33.4%	61.7%	100.0%

**House Taxation**  
Date: 2-10-10  
Attachment: 2



*Mark Parkinson, Governor*  
*William R. Thornton, Acting Secretary*

KansasCommerce.com

February 8, 2010

Representative Marvin Kleeb  
48<sup>th</sup> District  
State Capitol  
Topeka, KS 66612

Re: House Bill No. 2538

Rep. Kleeb:

First, I would like to thank you for your willingness to work with the Department of Commerce on this bill.

I believe that our joint work that has been done to modify the proposed House Bill No. 2538 improves that bill.

We support efforts to expand opportunities to grow quality jobs in Kansas while being prudent with investments of state dollars..

Sincerely,

William R. Thornton  
Secretary of Commerce

# HOUSE BILL No. 2538

By Committee on Taxation

1-26

Proposed Amendment HB 2538

House Taxation  
Date: 2-10-10  
Attachment: 4

9 AN ACT concerning the promoting employment across Kansas act; re-  
10 lating to qualifications for benefits under the act; amending K.S.A.  
11 2009 Supp. 74-50,211, 74-50,212 and 74-50,213 and repealing the ex-  
12 isting sections.  
13

74-50,210

Section 1. K.S.A. 2009 Supp.  
74-50,210. See attachment.

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

15 Section 1, K.S.A. 2009 Supp. 74-50,211 is hereby amended to read  
16 as follows: 74-50,211. As used in this act, unless the context otherwise  
17 requires:

18 (a) "Act" means the provisions of K.S.A. 2009 Supp. 74-50,210  
19 through 74-50,216, and amendments thereto.

20 ~~(b) "Business unit" means a facility, plant, division, office, depart-~~  
21 ~~ment, production line, production shift or other unit of business~~  
22 ~~operations.~~

23 ~~(c)~~ (b) "County average median wage" means the average median wage  
24 paid to employees located in the county where the qualified company  
25 intends to employ new employees as reported by the department of labor  
26 in its annual report for the previous year.

27 ~~(d)~~ (c) "Department" means the department of commerce.

28 ~~(e)~~ (d) "High-impact project" means a business development project  
29 for which the qualified company shall meet the requirements of subsec-  
30 tion (c) of K.S.A. 2009 Supp. 74-50,212, and amendments thereto.

31 ~~(f)~~ (e) "NAICS" means the North American industry classification  
32 system.

33 ~~(g)~~ (f) "NAICS code industry average wage" means the average wage  
34 paid to employees of companies classified in the same NAICS code as the  
35 qualified company for the region in which the qualified company intends  
36 to employ new employees as reported by the department of labor in its  
37 annual report for the previous year.

38 ~~(h)~~ (g) "Metropolitan county" means the county of Douglas, Johnson,  
39 Sedgwick, Shawnee or Wyandotte.

40 ~~(i)~~ (h) "New employee" means a person newly employed by the qual-  
41 ified company in the qualified company's business operating in Kansas  
42 during the taxable year for which benefits are sought under K.S.A. 2009  
43 Supp. 74-50,212, and amendments thereto. A person shall be deemed to

(d) "Existing business unit" means a facility, plant, division, office, department, production line, production shift or other unit of business operations acquired by a qualified company that has continuously operated a business outside of the state of Kansas during the 12 month period immediately preceding the qualified company's application for benefits under this act and can provide sufficient evidence of a bona fide acquisition of the existing Kansas business unit to the satisfaction of the secretary.  
(e) "Expanding business unit" means a facility, plant, division, office, department, production line, production shift or other unit of business operations that existed in Kansas prior to the submission of an application for benefits under this act and that is proposing a project that, in the discretion of the secretary, is at significant risk of being located outside the of the state and that provides a unique economic development opportunity of the state.

(j) "New business unit" means a facility, plant, division, office, department, production line, production shift or other unit of business operations that did not exist in Kansas prior to the submission of an application for benefits under this act and that provides documentation of such to the satisfaction of the secretary.

or maintained

1 be so engaged if such person performs duties in Kansas in connection  
2 with the operation of the Kansas business on: (1) A regular, full-time basis;  
3 or (2) a part-time basis, provided such person is customarily performing  
4 such duties at least 20 hours per week throughout the taxable year. ~~Em-~~  
5 ~~ployees acquired or relocated to Kansas from another state through an~~  
6 ~~expansion or relocation of a business operation to Kansas from another~~  
7 ~~state hired to fill job positions associated with a newly established business~~  
8 ~~unit pursuant to K.S.A. 2009 Supp. 74-50,212, and amendments thereto,~~  
9 ~~shall be considered as new employees.~~

(l) ~~(h)~~ (j) "Non-metropolitan county" means any county that is not a  
11 metropolitan county.

(m) ~~(i)~~ (k) (1) "Qualified company" means any ~~for-profit, not for profit~~  
13 ~~or governmental~~ corporation, partnership or other entity, ~~organized for~~  
14 ~~profit~~ making available to its full-time employees adequate health insur-  
15 ance coverage and paying at least 50% of the premium for such health  
16 insurance, which meets the requirements of K.S.A. 2009 Supp. 74-50,212,  
17 and amendments thereto.

and paying its new employees an average annual wage that meets standards established by the secretary

(2) "Qualified company" shall not include any ~~for-profit, not-for-~~  
19 ~~profit or governmental~~ corporation, partnership or other entity: (A) Which  
20 is identified by any of the following NAICS code groups, sectors or  
21 subsectors:

- 22 (i) Industry group 7132, ~~or 8131~~;
- 23 (ii) sectors 44, 45, 61, ~~92~~ or 221 (including water and sewer services);
- 24 or
- 25 (iii) subsector 722;

or 8131

, 92

26 (B) which is a bioscience company, as defined in K.S.A. 2009 Supp.  
27 74-99b33, and amendments thereto;

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

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

any entity

33 (3) Notwithstanding any provision of this subsection, except for par-  
34 agraphs (2)(B), (C) and (D), ~~a company~~ may be deemed a qualified com-  
35 pany if such ~~company's~~ headquarters or administrative offices located in  
36 this state serve an international or multi-state territory and such ~~company~~  
37 meets the requirements of K.S.A. 2009 Supp. 74-50,212, and amend-  
38 ments thereto.

entity's

entity

(4) Notwithstanding any provision of this subsection, except for paragraphs (2)(B), (C) and (D), any entity may be deemed a qualified company if such entity is an expanding business unit.

(n) ~~(j)~~ (l) "Secretary" means the secretary of the department of  
40 commerce.

3 ~~3~~ Sec. 2. K.S.A. 2009 Supp. 74-50,212 is hereby amended to read as  
42 follows: 74-50,212. (a) In order to qualify for benefits under this act a  
43 qualified company shall ~~relocate an existing business facility, office, de-~~

1 partment or other operation located outside the state of Kansas, whether  
 2 located in a foreign country or another state, and locate the jobs from  
 3 such business facility, office, department or other operation to Kansas:  
 4 (1) ~~Establish a new business unit in the state of Kansas that did not exist~~  
 5 ~~prior to the submission of an application for benefits under this act and~~  
 6 ~~locate the job positions associated with the new business unit in Kansas;~~  
 7 or (2) ~~retain the employees of an existing business unit located in Kansas~~  
 8 ~~subsequent to the qualified company's acquisition of such business unit,~~  
 9 ~~provided, the qualified company has continuously operated a business~~  
 10 ~~outside of the state of Kansas during the 12-month period immediately~~  
 11 ~~preceding the qualified company's application for benefits under this act,~~  
 12 ~~and can provide sufficient evidence of a bona fide acquisition of the ex-~~  
 13 ~~isting Kansas business unit to the satisfaction of the secretary.~~ A qualified  
 14 company may contract with ~~an unrelated~~ third party to perform services  
 15 whereby the third party serves as the legal employer of the new employees  
 16 providing services to the qualified company and such services are per-  
 17 formed in Kansas and the third party and the new employees are subject  
 18 to Kansas state withholding.

maintain

a

19 (b) Any qualified company, *qualifying for benefits pursuant to para-*  
 20 *graph (a)(1),* that locates its business ~~operation~~ unit in a metropolitan  
 21 county and will hire at least 10 new employees within two years from the  
 22 date the qualified company enters into an agreement with the secretary  
 23 pursuant to K.S.A. 2009 Supp. 74-50,213, and amendments thereto, or  
 24 any qualified company, *qualifying for benefits pursuant to paragraph*  
 25 *(a)(1),* that locates its business ~~operation~~ unit in a non-metropolitan  
 26 county and will hire at least five new employees within two years from  
 27 the date the qualified company enters into an agreement with the sec-  
 28 retary pursuant to K.S.A. 2009 Supp. 74-50,213, and amendments  
 29 thereto, shall: (1) Be eligible to retain 95% of the qualified company's  
 30 Kansas payroll withholding taxes for such new employees for a period of:

- 31 (1) ~~Five years if the new employees are compensated at a rate equal~~  
 32 ~~to at least 100% of the county average wage;~~
- 33 ~~— (2) six years if the new employees are compensated at a rate equal to~~  
 34 ~~at least 110% of the county average wage; or~~
- 35 ~~— (3) seven years if the new employees are compensated at a rate equal~~  
 36 ~~to at least 120% of the county average wage.~~
- 37 (A) *Five years if the average wage paid to the new employees is equal*  
 38 *to at least 100% of the county median wage;*
- 39 (B) *six years if the average wage paid to the new employees is equal*  
 40 *to at least 110% of the county median wage; or*
- 41 (C) *seven years if the average wage paid to the new employees is equal*  
 42 *to at least 120% of the county median wage; or*
- 43 (2) *be eligible to retain 95% of the qualified company's Kansas payroll*

1 withholding taxes for such new employees for a period of five years if the  
2 average wage paid to the new employees is equal to at least 100% of the  
3 NAICS code industry average wage.

4 (c) Any qualified company, qualifying for benefits pursuant to para-  
5 graph (a)(1), that engages in a high-impact project whereby the qualified  
6 company will hire at least 100 new employees within five two years from  
7 the date the qualified company enters into an agreement with the sec-  
8 retary pursuant to K.S.A. 2009 Supp. 74-50,213, and amendments  
9 thereto, shall be eligible to retain 95% of the qualified company's Kansas  
10 payroll withholding taxes for such new employees for a period of:

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

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

15 ~~—(3)—nine years if the new employees are compensated at a rate equal~~  
16 ~~to at least 120% of the county average wage; or~~

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

19 (1) *Seven years if the average wage paid to the new employees is equal*  
20 *to at least 100% of the county median wage;*

21 (2) *eight years if the average wage paid to the new employees is equal*  
22 *to at least 110% of the county median wage;*

23 (3) *nine years if the average wage paid to the new employees is equal*  
24 *to at least 120% of the county median wage; or*

25 (4) *ten years if the average wage paid to the new employees is equal*  
26 *to at least 140% of the county median wage.*

27 (d) Any qualified company, qualifying for benefits pursuant to par-  
28 agraph (a)(2), that ~~retains~~ the employees of an existing business unit lo-  
29 cated in Kansas for a period of two years from the date the qualified  
30 company enters into an agreement with the secretary pursuant to K.S.A.  
31 2009 Supp. 74-50,213, and amendments thereto, shall be eligible to retain  
32 95% of the qualified company's Kansas payroll withholding taxes for such  
33 employees for a period of five years.

or expanding

maintains

up to

34 (e) In the event that a qualified company contracts with a third party  
35 as described in paragraphs (a)(3) and (4) subsection (a), the third party  
36 shall remit payments equal to the amount of Kansas payroll withholding  
37 taxes the qualified company is eligible to retain under this section to the  
38 qualified company, and report such amount to the department of revenue  
39 as required pursuant to subsection (a) of K.S.A. 2009 Supp. 74-50,214,  
40 and amendments thereto.

4

41 Sec. 3. K.S.A. 2009 Supp. 74-50,213 is hereby amended to read as  
42 follows: 74-50,213. (a) Any qualified company meeting the requirements  
43 of K.S.A. 2009 Supp. 74-50,212, and amendments thereto, may apply to



1 the secretary for benefits under this act. The application shall be sub-  
 2 mitted on a form and in a manner prescribed by the secretary, and shall  
 3 include: (1) Evidence that the applicant is a qualified company; and (2)  
 4 evidence that the applicant meets the requirements of K.S.A. 2009 Supp.  
 5 74-50,212, and amendments thereto.

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

11 (c) Upon approval of an application for benefits under this act, the  
 12 secretary may enter into an agreement with the qualified company for  
 13 benefits under this act. If necessary, the secretary may also enter into an  
 14 agreement with any third party described in subsection (a) of K.S.A. 2009  
 15 Supp. 74-50,212, and amendments thereto, or such third party may be a  
 16 party to the agreement between the qualified company and the secretary.  
 17 The agreement shall commit the secretary to certify to the secretary of  
 18 revenue: (1) That the qualified company is eligible to receive benefits  
 19 under this act; (2) the number of new employees hired by the qualified  
 20 company; and (3) the amount of gross wages being paid to each new  
 21 employee.

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

33 (e) A qualified company that is already receiving benefits pursuant to  
 34 this act may apply to the secretary for additional benefits if the qualified  
 35 company meets the requirements of K.S.A. 2009 Supp. 74-50,212, and  
 36 amendments thereto.

37 (f) A qualified company seeking benefits shall ~~not~~ be allowed to partic-  
 38 ipate in the IMPACT program; ~~or any program~~ pursuant to K.S.A. 74-  
 39 50,102 *et seq.*, and amendments thereto, ~~or~~ *but shall not be allowed to*  
 40 *participate in* any other program in which any portion of such qualified  
 41 company's Kansas payroll withholding taxes have been pledged to finance  
 42 indebtedness or transferred to or for the benefit of such company. A  
 43 qualified company shall not be allowed to claim any credits under K.S.A.

1 79-32,153, 79-32,160a or 79-32,182b, and amendments thereto, if such  
 2 credits would otherwise be earned for the hiring of new employees and  
 3 the qualified company has retained any Kansas payroll withholding taxes  
 4 from wages of such employees. *A qualified company shall not be eligible*  
 5 *to receive benefits under K.S.A. 2009 Supp. 74-50,212, and amendments*  
 6 *thereto, and under K.S.A. 74-50,102 et seq., and amendments thereto, for*  
 7 *the same new employees.*

(h)

8 ~~(g)~~ The secretary shall adopt rules and regulations necessary to im-  
 9 plement and administer the provisions of this act.

5

10 Sec. 4. K.S.A. 2009 Supp. 74-50,211, 74-50,212 and 74-50,213 are  
 11 hereby repealed.

74-50,210

6

12 Sec. 5. This act shall take effect and be in force from and after its  
 13 publication in the statute book.

(g) The secretary shall be authorized to impose a nonrefundable application fee of up to one thousand dollars for each application submitted pursuant to this act.

Section 1.

**74-50,210. Title and intent of act.** (a) The provisions of K.S.A. 2009 Supp. 74-50,210 through 74-50,216, 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.

**History:** L. 2009, ch. 104, § 1; July 1.

in

location

## IMPACT & PEAK ECONOMIC DEVELOPMENT PROGRAM COMPARISON

- Same Goal: Creation of Jobs & Long-term Growth, Diversity and Stability of the Kansas Economy
- Different Methodologies: Economic Development Programs to Compete with other states and nations using Up-front cash incentives (IMPACT) or Benefit incentives after Jobs Created (PEAK)

	IMPACT	PEAK - Updated	PEAK-Old
Requires debt, interest and bond underwriting costs	Y	N	N
Practical application only to large-scale projects	Y	N	N
Utilizes Statewide Withholding Funds as Base	Y	N	N
Up-front monetary benefit before jobs created	Y	N	N
Monetary benefit only after jobs created & wages paid	N	Y	Y
Statutory requirement for wage thresholds	N	Y	Y
Jobs creation for all skill levels	Y	Y	N
Requires relocation of jobs from out-of-state closing of facilities	N	N	Y
Benefits available for expansion & new business	Y	Y	N
Benefits for KS companies available for organic growth	Y	N	N
KS companies can use for new business units	Y	Y	N
KS companies can use for major expansions	Y – No evidence of out-of-state competition required	Y – Compelling proof of out-of-state competition required	N
KS companies: eligible for organic growth	Y	N	N
Non-profit HQ & Fed/Int'l Government entity eligible	Y	Y	N
At-Risk Jobs Retention Component when KS co. acquired by out-of-state entity	Y	Y	N
Has claw back provisions	Y	Y	Y
Subject to monitoring/Audit	Y	Y	Y
Approval & Authorization of Commerce Dep't Required	Y	Y	Y

# HOUSE BILL No. 2538

By Committee on Taxation

1-26

Proposed Amendment:  
Require qualified company to pay 100% of employee health insurance premiums

House Taxation  
Date: 2-10-10  
Attachment: 6

9 AN ACT concerning the promoting employment across Kansas act; re-  
10 relating to qualifications for benefits under the act; amending K.S.A.  
11 2009 Supp. 74-50,211, 74-50,212 and 74-50,213 and repealing the ex-  
12 isting sections.  
13

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

15 Section 1. K.S.A. 2009 Supp. 74-50,211 is hereby amended to read  
16 as follows: 74-50,211. As used in this act, unless the context otherwise  
17 requires:

18 (a) "Act" means the provisions of K.S.A. 2009 Supp. 74-50,210  
19 through 74-50,216, and amendments thereto.

20 (b) "Business unit" means a facility, plant, division, office, depart-  
21 ment, production line, production shift or other unit of business  
22 operations.

23 (c) "County average median wage" means the average median wage  
24 paid to employees located in the county where the qualified company  
25 intends to employ new employees as reported by the department of labor  
26 in its annual report for the previous year.

27 ~~(e)~~ (d) "Department" means the department of commerce.

28 ~~(e)~~ (e) "High-impact project" means a business development project  
29 for which the qualified company shall meet the requirements of subsec-  
30 tion (c) of K.S.A. 2009 Supp. 74-50,212, and amendments thereto.

31 ~~(e)~~ (f) "NAICS" means the North American industry classification  
32 system.

33 (g) "NAICS code industry average wage" means the average wage  
34 paid to employees of companies classified in the same NAICS code as the  
35 qualified company for the region in which the qualified company intends  
36 to employ new employees as reported by the department of labor in its  
37 annual report for the previous year.

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

40 ~~(g)~~ (i) "New employee" means a person newly employed by the qual-  
41 ified company in the qualified company's business operating in Kansas  
42 during the taxable year for which benefits are sought under K.S.A. 2009  
43 Supp. 74-50,212, and amendments thereto. A person shall be deemed to

Miscellaneous  
Date: \_\_\_\_\_  
Houses No. \_\_\_\_\_

1 be so engaged if such person performs duties in Kansas in connection  
2 with the operation of the Kansas business on: (1) A regular, full-time basis;  
3 or (2) a part-time basis, provided such person is customarily performing  
4 such duties at least 20 hours per week throughout the taxable year. Em-  
5 ployees ~~acquired or relocated to Kansas from another state through an~~  
6 ~~expansion or relocation of a business operation to Kansas from another~~  
7 ~~state hired to fill job positions associated with a newly established business~~  
8 ~~unit pursuant to K.S.A. 2009 Supp. 74-50,212, and amendments thereto,~~  
9 shall be considered as new employees.

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

12 (h) (k) (1) "Qualified company" means any *for-profit, not-for-profit*  
13 *or governmental* corporation, partnership or other entity, ~~organized for~~  
14 ~~profit~~ making available to its full-time employees adequate health insur-  
15 ance coverage and paying ~~at least 50%~~ of the premium for such health  
16 insurance, which meets the requirements of K.S.A. 2009 Supp. 74-50,212,  
17 and amendments thereto.

18 (2) "Qualified company" shall not include any *for-profit, not-for-*  
19 *profit or governmental* corporation, partnership or other entity: (A) Which  
20 is identified by any of the following NAICS code groups, sectors or  
21 subsectors:

- 22 (i) Industry group 7132 ~~or 8131~~;
- 23 (ii) sectors 44, 45, 61, ~~92~~ or 221 (including water and sewer services);
- 24 or
- 25 (iii) subsector 722;

26 (B) which is a bioscience company, as defined in K.S.A. 2009 Supp.  
27 74-99b33, and amendments thereto;

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

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

33 (3) Notwithstanding any provision of this subsection, except for par-  
34 agraphs (2)(B), (C) and (D), a company may be deemed a qualified com-  
35 pany if such company's headquarters or administrative offices located in  
36 this state serve an international or multi-state territory and such company  
37 meets the requirements of K.S.A. 2009 Supp. 74-50,212, and amend-  
38 ments thereto.

39 (j) (l) "Secretary" means the secretary of the department of  
40 commerce.

41 Sec. 2. K.S.A. 2009 Supp. 74-50,212 is hereby amended to read as  
42 follows: 74-50,212. (a) In order to qualify for benefits under this act a  
43 qualified company shall ~~relocate an existing business facility, office, de-~~

→ 100%

1 partment or other operation located outside the state of Kansas, whether  
 2 located in a foreign country or another state, and locate the jobs from  
 3 such business facility, office, department or other operation to Kansas:  
 4 (1) Establish a new business unit in the state of Kansas that did not exist  
 5 prior to the submission of an application for benefits under this act and  
 6 locate the job positions associated with the new business unit in Kansas;  
 7 or (2) retain the employees of an existing business unit located in Kansas  
 8 subsequent to the qualified company's acquisition of such business unit,  
 9 provided, the qualified company has continuously operated a business  
 10 outside of the state of Kansas during the 12-month period immediately  
 11 preceding the qualified company's application for benefits under this act,  
 12 and can provide sufficient evidence of a bona fide acquisition of the ex-  
 13 isting Kansas business unit to the satisfaction of the secretary. A qualified  
 14 company may contract with an unrelated third party to perform services  
 15 whereby the third party serves as the legal employer of the new employees  
 16 providing services to the qualified company and such services are per-  
 17 formed in Kansas and the third party and the new employees are subject  
 18 to Kansas state withholding.

19 (b) Any qualified company, *qualifying for benefits pursuant to para-*  
 20 *graph (a)(1)*, that locates its business ~~operation~~ unit in a metropolitan  
 21 county and will hire at least 10 new employees within two years from the  
 22 date the qualified company enters into an agreement with the secretary  
 23 pursuant to K.S.A. 2009 Supp. 74-50,213, and amendments thereto, or  
 24 any qualified company, *qualifying for benefits pursuant to paragraph*  
 25 *(a)(1)*, that locates its business ~~operation~~ unit in a non-metropolitan  
 26 county and will hire at least five new employees within two years from  
 27 the date the qualified company enters into an agreement with the sec-  
 28 retary pursuant to K.S.A. 2009 Supp. 74-50,213, and amendments  
 29 thereto, shall: (1) Be eligible to retain 95% of the qualified company's  
 30 Kansas payroll withholding taxes for such new employees for a period of:

31 ~~(1) Five years if the new employees are compensated at a rate equal~~  
 32 ~~to at least 100% of the county average wage;~~  
 33 ~~—(2) six years if the new employees are compensated at a rate equal to~~  
 34 ~~at least 110% of the county average wage; or~~  
 35 ~~—(3) seven years if the new employees are compensated at a rate equal~~  
 36 ~~to at least 120% of the county average wage.~~

37 (A) *Five years if the average wage paid to the new employees is equal*  
 38 *to at least 100% of the county median wage;*

39 (B) *six years if the average wage paid to the new employees is equal*  
 40 *to at least 110% of the county median wage; or*

41 (C) *seven years if the average wage paid to the new employees is equal*  
 42 *to at least 120% of the county median wage; or*

43 (2) *be eligible to retain 95% of the qualified company's Kansas payroll*

1 *withholding taxes for such new employees for a period of five years if the*  
 2 *average wage paid to the new employees is equal to at least 100% of the*  
 3 *NAICS code industry average wage.*

4 (c) Any qualified company, *qualifying for benefits pursuant to para-*  
 5 *graph (a)(1), that engages in a high-impact project whereby the qualified*  
 6 *company will hire at least 100 new employees within five two years from*  
 7 *the date the qualified company enters into an agreement with the sec-*  
 8 *retary pursuant to K.S.A. 2009 Supp. 74-50,213, and amendments*  
 9 *thereto, shall be eligible to retain 95% of the qualified company's Kansas*  
 10 *payroll withholding taxes for such new employees for a period of:*

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

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

15 ~~—(3) nine years if the new employees are compensated at a rate equal~~  
 16 ~~to at least 120% of the county average wage; or~~

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

19 (1) *Seven years if the average wage paid to the new employees is equal*  
 20 *to at least 100% of the county median wage;*

21 (2) *eight years if the average wage paid to the new employees is equal*  
 22 *to at least 110% of the county median wage;*

23 (3) *nine years if the average wage paid to the new employees is equal*  
 24 *to at least 120% of the county median wage; or*

25 (4) *ten years if the average wage paid to the new employees is equal*  
 26 *to at least 140% of the county median wage.*

27 (d) Any qualified company, *qualifying for benefits pursuant to par-*  
 28 *agraph (a)(2), that retains the employees of an existing business unit lo-*  
 29 *cated in Kansas for a period of two years from the date the qualified*  
 30 *company enters into an agreement with the secretary pursuant to K.S.A.*  
 31 *2009 Supp. 74-50,213, and amendments thereto, shall be eligible to retain*  
 32 *95% of the qualified company's Kansas payroll withholding taxes for such*  
 33 *employees for a period of five years.*

34 (e) In the event that a qualified company contracts with a third party  
 35 as described in ~~paragraphs (a)(3) and (4)~~ *subsection (a)*, the third party  
 36 shall remit payments equal to the amount of Kansas payroll withholding  
 37 taxes the qualified company is eligible to retain under this section to the  
 38 qualified company, and report such amount to the department of revenue  
 39 as required pursuant to subsection (a) of K.S.A. 2009 Supp. 74-50,214,  
 40 and amendments thereto.

41 Sec. 3. K.S.A. 2009 Supp. 74-50,213 is hereby amended to read as  
 42 follows: 74-50,213. (a) Any qualified company meeting the requirements  
 43 of K.S.A. 2009 Supp. 74-50,212, and amendments thereto, may apply to



1 the secretary for benefits under this act. The application shall be sub-  
 2 mitted on a form and in a manner prescribed by the secretary, and shall  
 3 include: (1) Evidence that the applicant is a qualified company; and (2)  
 4 evidence that the applicant meets the requirements of K.S.A. 2009 Supp.  
 5 74-50,212, and amendments thereto.

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

11 (c) Upon approval of an application for benefits under this act, the  
 12 secretary may enter into an agreement with the qualified company for  
 13 benefits under this act. If necessary, the secretary may also enter into an  
 14 agreement with any third party described in subsection (a) of K.S.A. 2009  
 15 Supp. 74-50,212, and amendments thereto, or such third party may be a  
 16 party to the agreement between the qualified company and the secretary.  
 17 The agreement shall commit the secretary to certify to the secretary of  
 18 revenue: (1) That the qualified company is eligible to receive benefits  
 19 under this act; (2) the number of new employees hired by the qualified  
 20 company; and (3) the amount of gross wages being paid to each new  
 21 employee.

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

33 (e) A qualified company that is already receiving benefits pursuant to  
 34 this act may apply to the secretary for additional benefits if the qualified  
 35 company meets the requirements of K.S.A. 2009 Supp. 74-50,212, and  
 36 amendments thereto.

37 (f) A qualified company seeking benefits shall ~~not~~ be allowed to partici-  
 38 pinate in the IMPACT program, ~~or any program~~ pursuant to K.S.A. 74-  
 39 50,102 *et seq.*, and amendments thereto, ~~or~~ *but shall not be allowed to*  
 40 *participate* in any other program in which any portion of such qualified  
 41 company's Kansas payroll withholding taxes have been pledged to finance  
 42 indebtedness or transferred to or for the benefit of such company. A  
 43 qualified company shall not be allowed to claim any credits under K.S.A.

1 79-32,153, 79-32,160a or 79-32,182b, and amendments thereto, if such  
2 credits would otherwise be earned for the hiring of new employees and  
3 the qualified company has retained any Kansas payroll withholding taxes  
4 from wages of such employees. *A qualified company shall not be eligible*  
5 *to receive benefits under K.S.A. 2009 Supp. 74-50,212, and amendments*  
6 *thereto, and under K.S.A. 74-50,102 et seq., and amendments thereto, for*  
7 *the same new employees.*

8 (g) The secretary shall adopt rules and regulations necessary to im-  
9 plement and administer the provisions of this act.

10 Sec. 4. K.S.A. 2009 Supp. 74-50,211, 74-50,212 and 74-50,213 are  
11 hereby repealed.

12 Sec. 5. This act shall take effect and be in force from and after its  
13 publication in the statute book.

## SUMMARY OF ECONOMIC AND TAX IMPACT ANALYSIS

4,000 Jobs Created Per Revenue Department Estimate  
\$ 40,000 Annual income per employee

\$ 160,000,000 New Income from the 4000 Jobs Creation  
65% Percent of annual income spent on goods & services subject to Sales Tax

\$ 104,000,000 Total New Income Spent on goods and services subject to Sales Tax  
5.3% State Sales Tax Rate

\$ 5,512,000 New Sales Tax from New Jobs  
1,996,000 Additional Fuel Tax (1500 gallons @ 24 cents Xs 4000 jobs)  
1,075,000 Increased property taxes @ 21.5 mills (500 homes @ \$100,000 +  
Commercial property built = \$50,000,000 @ 21.5 mills)

\$ 8,583,000 Increased State Tax Revenue from Jobs Created  
6,000,000 Theoretically lost income taxes

\$ 2,583,000 Net Increase in State Tax Revenue from 4000 Jobs Created

### ADD MULTIPLIER EFFECT ON 1544 SPIN-OFF NEW JOBS

\$ 2,316,000 New Income Taxes from Spin-off Jobs: 1544 jobs @ \$30,000 =  
\$ 46,320,000 new income @ 4.25% income tax rate  
2,454,960 New Sales Tax

\$ 4,770,960 Spin-off Job State Tax Revenue Job Generated

### PLUS

\$ 8,500,000 City, County and Local Tax Revenue Generated

2,395,008 State Unemployment Taxes Generated 5544 jobs @ \$ 8,000 taxable  
Wage base = \$ 44,352,000 taxable wages @ 5.4% = \$ 2,395,008

1,118,000 Corporate Income Tax Increase

House Taxation

Date: 2-10-10

Attachment: 7