Approved: 4-30-10
Date

MINUTES OF THE SENATE COMMERCE COMMITTEE

The meeting was called to order by Chairperson Karin Brownlee at 8:30 a.m. on March 10, 2010, in Room 548-S of the Capitol.

All members were present.

Committee staff present:
Ken Wilke, Office of the Revisor of Statutes
Reed Holwegner, Kansas Legislative Research Department
Kathie Sparks, Kansas Legislative Research Department
Marilyn Arnone, Committee Assistant

Conferees appearing before the Committee:
Joan Wagnon, Secretary Department of Revenue
Representative Marvin Kleeb

Others attending:
See attached list.

HB 2538 - H Sub for H 2538 by Committee on Taxation - Revision and expansion of promoting employment across Kansas act

Chairperson Brownlee reopened the Hearing on **HB 2538** with testimony from opponents of the bill.

Secretary of Revenue Joan Wagnon is an opponent of the bill as it currently stands. (Attachment 1) The concerns are in two parts, the first is the fiscal concern and the second is the policy concern. Right now, there are a number of bills that have transferred withholding tax to the employer. Most of them have been with legislative action and have been necessary. Transfers of withholding tax revenues dedicated to the Bioscience Fund under the Bioscience Act had to be reduced for this year and next year. If these funds under the Bioscience Act cannot be transferred as they should be, how can the State handle a significant expansion of PEAK in **HB 2538**, another withholding tax diversion program? The fiscal note for this bill (Attachment 2) indicates that this proposal will have a significant negative fiscal impact that increases by $6 million each year for the next five fiscal years. Given the current fiscal environment, the program is too costly.

Growth in private sector payrolls have traditionally been one of the reasons why Kansas would provide incentives to a business to expand in or move to the State. In addition to providing jobs, tax revenues that flow from these jobs (in this case, the withholding tax) are the return on the investment the State has made in the private company. **HB 2538** would deny the State that source of revenue growth. Kansas cannot afford such a large scale expansion of PEAK before there has been a measure of effectiveness of the current program.

Chairman Brownlee noted that her constituents want to know what is being done to grow the economy. This is the other side of the equation to get quality programs and policies that will grow the economy. Secretary Wagnon agreed saying it also needs to be done thoughtfully and carefully with good mechanisms in place. A good question to the proponents of this bill would be "what are you willing to give up to pay for this bill?"

Discussion followed by the committee, Secretary Wagnon and Representative Kleeb to clarify language of the bill and to answer questions. Senator Emler concluded that an agreement can be reached that is discretionary and not an entitlement. The committee does not seem to be in disagreement with the idea behind the bill and where it should go in the future. However, some wordsmithing needs to be done to ensure that it doesn't impact the budget even more adversely over the next few years. He supports getting Commerce, Revenue and members of the committee together so the bill can move forward on something positive that will not be rejected by the Senate body.

Senator Wagle recommended the Post Audit Report regarding tax credits be looked at by the committee. She thought it was important to review the Audit as the bill was being discussed. A Post Audit review might help with the package to grow Kansas and also might help tidy up this bill.

Chairperson Brownlee commented that when we talk about making the fiscal note revenue neutral, we don't add the positive side of the fiscal impact. We need to consider some of these tax credits that need to be either trimmed or eliminated, but on the other hand, the fiscal notes should give us a more accurate perspective of future growth.

Secretary Wagnon said she recommended an analysis be produced every year by either Commerce or an independent group. This kind of analysis needs to be built into every bill. If an analysis requirement was built into the PEAK bill, then eventually it shows what the real benefit is to the state. Everybody benefits when that information is known.

Senator Wagle recommended the committee look at the Post Audit report on tax credits; it certainly would help in committee deliberations. She read that Kansas has the highest Angel Tax Credit in the nation, and just by lowering that credit might help fix things. It would be advantageous to look at other tax credits as well. Chairperson Brownlee said that Tuesday, March 16, would be a good time to schedule a Post Audit review.

Senator Emler said he thought Commerce should look at the business plan of a bill which would show if this is viable. There has to be accountability and the committee as a planning group needs to know that a plan is in place to do some good for the future. This committee tries to look forward, and not just do short sighted fixes. The committee needs that piece from the Department of Commerce to say this is the positive side of the issue.

Secretary Wagnon said that a few years ago, local government was told a cost benefit analysis was required when a tax exemption was being evaluated before it would be granted.. Now every community has to do a cost benefit analysis. Revenue imposed that requirement on itself.

Chairperson Brownlee said that as these pieces of legislation are passed , they should be evaluated by Kansas, Inc. But the problem remains that Kansas, Inc. is not funded. Over the years, we have tried to provide evaluation and transparency, but we need to figure out the mechanism for the funds to be provided for that to happen.

Secretary Bill Thornton, Commerce Department, presented written testimony only as an opponent of the bill. (Attachment 3)

Chairperson Brownlee closed the Hearing on **HB 2538.**

Senator Lynn moved that the Minutes for meetings of January 20, January 21, January 28, February 3, February 4 and February 9 be approved. Senator Emler seconded the motion. Motion carried.

The next meeting is scheduled for March 16, 2010.

The meeting was adjourned at 09:30 a.m.

COMMERCE COMMITTEE GUEST LIST

DATE: 3-10-10

NAME	REPRESENTING
Jim Maag	Spirit AeroSystems
Sean Miller	Capitol Strategies
Bernie Koch	KEPC
Tom Riederer	Southwest Johnson Co EDC

KANSAS
DEPARTMENT OF REVENUE

Mark Parkinson, Governor
Joan Wagnon, Secretary

www.ksrevenue.org

Senate Commerce Committee
Joan Wagnon
March 9, 2010

Testimony in Opposition to House Bill 2538

Senator Brownlee, Chair, and Members of the Committee:

The Department raises several concerns with House Bill 2538's significant expansion of the Promoting Employment Across Kansas (PEAK) act passed last session. The ink has barely had time to dry on this legislation--it has been on the books for only seven months--so we have no data on the effectiveness of this program yet. Department of Commerce implementing regulations are still in the approval process. This expansion proposal is premature—especially now, when February state general fund (SGF) revenues fell $71 million below the Consensus Revenue estimate, SGF revenues are expected to fall for an unprecedented three consecutive fiscal years and state government has already endured enormous budget reductions.

Fiscal Concerns

Employer withholding tax is a vital component of the State's individual income tax base and currently makes up about 70% of individual income tax receipts. About 50% of State General Fund tax receipts consist of individual income tax. Six 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. During an economic downturn, the loss of employer withholding tax revenue can be devastating.

To balance the FY 09 and FY 10 budgets, 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) had to be reduced, and transfers for FY 11 will also need to be reduced. Since FY 06, over $132.5 million in employer withholding tax revenues have been transferred to the Bioscience Fund. If we currently cannot afford to transfer to the Bioscience Fund the withholding tax revenues dedicated in the Bioscience Act, how can the State handle a significant expansion of PEAK in House Bill 2538, another withholding tax diversion program?

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 their investments, income and hiring, and tax receipts respond positively. When the economy shrinks, businesses lay people off, stop investment projects, and tax receipts go down.

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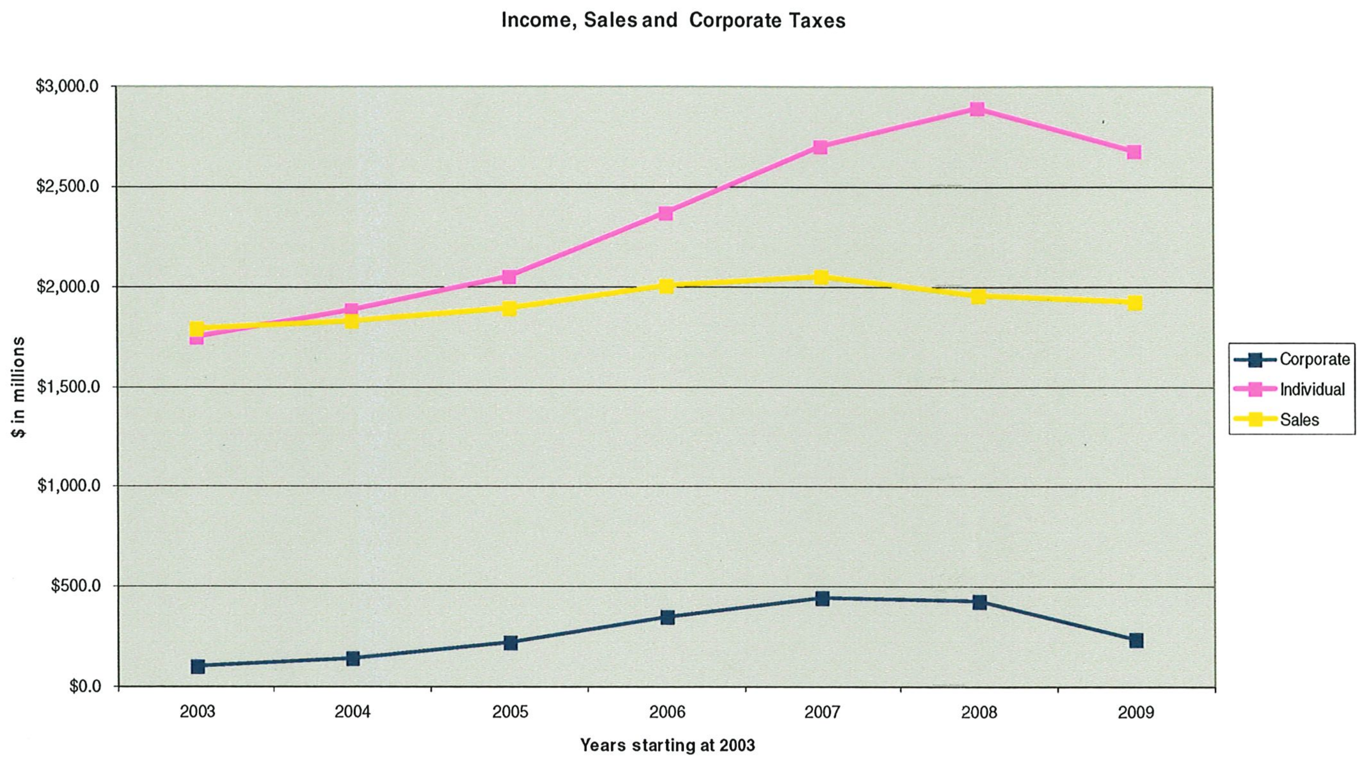
This chart shows the growth of the income tax since 2003 as compared to the state sales tax. Without the growth in the income tax our budget problems would have been much worse than they are now. When the State's economy does finally turn around, proposals that capture the income tax withholding, such as House Bill 2538, will divert the very tax revenue growth that the State would otherwise use to fund schools, health care, and other necessary services.



As our fiscal note (attached) indicates, this proposal will have a significant negative fiscal impact that increases by $6 million each year for the next 5 fiscal years. Given the current fiscal environment, the program is too costly.

Policy Concerns

Growth in private sector payrolls has traditionally been one of the reasons why a State would provide incentives to a business to expand in or move to the State. In addition to providing jobs for its citizens, the tax revenues that flow from those jobs –in this case, the withheld Income tax, are the return on the investment the state has made in the private company. House Bill 2538 would deny the State that source of revenue growth.

PEAK, as enacted in 2009 Senate Bill 97, carefully focused on providing incentives to out-of-state for-profit businesses meeting certain criteria to move higher wage jobs from out-of-state to Kansas, permitting those businesses to retain the withholding taxes on those moved jobs. However, the expansion of PEAK in House Bill

2538 moves away from the carefully focused approach and expands in ways that are detrimental to the state:

-- Adds a broad, new definition of "business unit" and provides that a qualified company need not relocate jobs to Kansas, but can qualify for benefits by either 1) establishing a new business unit in Kansas or 2) retaining the employees of an existing business unit in Kansas after an acquisition, provided the company operated outside of Kansas for at least 12 months and the Secretary of Commerce deems the acquisition a bona fide acquisition.

Under the current law, only out-of-state businesses moving jobs from out-of-state into Kansas qualify. House Bill 2538 opens PEAK up not only to existing Kansas businesses establishing a new "business unit" to add jobs, new businesses that start up in Kansas, but also to existing Kansas businesses that are acquired by another company and merely retaining existing jobs in Kansas. This drastically increases the pool of applicants.

--Changes the wage standard from "county average wage" to the county median wage; adds a new definition for "NAICS code industry average wage", so if the business fails to meet either the "county average wage" or the "county median wage," it can qualify to retain withholding taxes under PEAK using an even lower standard, the "NAICS code industry average wage" in that region.

Under current law, for the business to be able to retain the withholding tax for the job moved to Kansas, the wage level must equal or exceed the county average wage. This assures that the incentive of the state foregoing the withholding taxes on wages is only available for the higher wage jobs. The county median wage is generally significantly lower than the county average wage: the national average wage is $39,600 and the national median wage is $26,500.

Under House Bill 2538, two options are available: (1) the county median wage level can be met, and if that level is not met, then (2) an even lower wage level can be used: the NAICS code industry average for that region. A call center that pays employees minimum wage could qualify, assuming it paid the same average wage level of other call centers in the region.

House Bill 2538, as amended on the House Floor, removed the Secretary of Commerce's ability to set a wage floor by which projects could be denied, notwithstanding their meeting of the county median wage or NAICS standards. This took away the Secretary of Commerce's ability to develop standards for a minimum acceptable wage level and other factors a company would have to meet.

--Expands the definition of "qualified company" to include not-for-profit and governmental entities.

Current law expressly excludes not-for-profit and governmental entities from participating in PEAK. House Bill 2538 removes that exclusion. Non-profits do not pay income tax and many are exempt from sales tax and property tax. Governmental entities do not pay income tax, sales tax or property tax. Under this proposal, they will not be paying withholding tax either. Where is the benefit on the state's investment?

--Provides that the employer can keep the withholding tax from all employees' wages in the new or retained business unit, regardless of whether they were above or below the county median wage threshold.

Under current law, the employer may retain withholding taxes only on the wages for the jobs moved to Kansas that equal or exceed the county average wage. House Bill 2538 would eliminate that restriction, so the employer could retain the withholding taxes on all jobs—even if only one or some of the jobs equaled or exceeded the county median wage.

--Allows a company that retains the employees of an existing business unit Kansas for two years to retain 95% of the employee withholding for those employees for five years.

Under current law, simply retaining existing jobs will not qualify for PEAK. Does it make sense to allow a company that retains employees in Kansas for 2 years to keep the withholding taxes on those jobs for 5 years?

--Allows a company to use both the PEAK and IMPACT programs, but not for the same jobs.

Under current law, a business cannot participate in PEAK and IMPACT at the same time.

Recommentations:

The Legislative Post Audit Study and the KACIR report both point to some ways that the legislature can ensure that when preferential tax treatment is given, there is a clear public benefit. Should this bill be given serious consideration in this legislative session, the following LPA or KACIR recommendations should be incorporated into the bill.

1. A purpose that is specific and measurable should be set out in the statute. A clear, specific and measurable purpose not only will solidify that there is a clear public goal in mind, but also will drive the types of data collection efforts that are needed to evaluate whether the tax credit is successful.
2. Someone should be made responsible for collecting the kinds of information that will be needed to evaluate the success of the program.
3. There should be a sunset provision to ensure a periodic review of the program.
4. There should be transparency and regular reporting to allow the public to know who is benefitting. Neighboring states of Oklahoma and Nebraska have similar laws which could serve as a model

In addition, the Department of Revenue also recommends the following:

1. Make the program discretionary instead of an entitlement, and give the responsibility to the Secretary of Commerce to determine which programs should qualify. That way each application could be evaluated prior to funding, and monitored throughout the life of the program to ensure that it was meeting the goals that are stated, and cancelled if it is not.

2. Require the Department of Commerce to calculate an expected return on investment for all applicants, and to track the success in meeting the ROI. They should report to the legislature annually on this program.
3. Cap the program expenditures at an annual amount, say $6-10 million (the amount of the fiscal note), and repeal the Business and Job Development Credit in order to pay for the program. (The repeal would have to be done prospectively.)

In conclusion, Kansas cannot afford such a large-scale expansion of PEAK before we have had a chance to measure the effectiveness of the current program. At a time when the Governor is looking to fill what may be a $500 million negative balance between projected expenditures and revenues for FY 2011, it is imprudent to open the state's coffers on the hope that this untested program will yield results.

This committee has been searching for some way to adequately evaluate the success of its activities to encourage economic development. Yet, what is before you today, is another bill with no measurement criteria, questionable reasons for expansion before the pilot program proves itself, and no way to measure success. Please either take the time to develop this concept properly, or save it for another day.

Response to Legislative Research Memo on Potential Fiscal Impact of HB 2538

1. The Memo is based on the assumption that "none of the 4,000 individuals would otherwise remain, work, or spend money in the state absent the enactment of HB 2538." This is the obvious difficulty with any attempted "cost-benefit" analysis of tax incentives: how do we know that the activity (jobs in this case) would not have occurred without the tax incentive, and how is it possible to separate out what is the organic growth in the economy as it goes through its various "ups" and "downs" (and hoping we are about to enter an "up" phase as the effects of the recent recession dissipate) vs. the effect of the incentive? Our fiscal note estimates that approximately 4,000 jobs would fall within the PEAK program, as amended by HB 2538. We do not attempt to predict how many of those jobs are due to organic growth--they all could be.

2. The Memo assumes that 65% of salaries from the 4000 jobs will be spent on goods and services that are subject to sales tax. This is overly optimistic. How much salary income is left after payment of state and federal income tax , property tax, Social Security, Medicare, health insurance premiums and other medical expenses, car insurance, life insurance, mortgage payment or rent, utilities (residential not subject to state or local sales tax—except heat and electricity which is only subject local sales tax, telephone would be subject to sales tax)? State sales tax would primarily accrue on purchases of food, motor vehicles, clothing, entertainment, telephone, and discretionary purchases of tangible personal property. The United States Department of Labor currently uses the assumption that 42% of annual household purchases would be subject to state sales tax.

3. The Memo estimates the amount of additional motor fuel tax collected on fuel purchased by households with the new jobs. Again, how do we know how much driving occurred but for the jobs? As evidenced by the current debate in the legislative transportation committees, motor fuel tax does not raise sufficient revenue to fund our highway programs. Even assuming the additional driving mileage prediction is accurate, our roads will be that much worse off for the wear and tear, and any additional fuel tax will be woefully inadequate to pay for that wear and tear on the roads.

4. The Memo discusses additional unemployment compensation taxes. The current level of unemployment compensation tax receipts does not adequately satisfy the State's trust fund obligations. This is another example of a tax that already fails to generate sufficient revenue to meet the needs of the State's citizens.

5. The Memo mentions additional property tax revenues being generated from the new jobs. Will that be sufficient to cover the increased school funding needs when the children from these households enroll in our public schools? The Legislature is currently debating how much further state school funding is to be cut. State base aid per pupil is currently approximately $4,000.

6. It is unrealistic to attempt to estimate the positive secondary effects from these 4,000 jobs, without balancing that against the resulting negative secondary demands on the state and local government infrastructure: increased wear and tear on our roads, more demand on schools, increased fire and police protection and usage of the judicial system, increased demand for medical services, increased water and sewage needs, etc.

We have no way to accurately predict these positive and negative secondary effects. But we do know for certain that an increasing portion of our employer withholding tax base will disappear with HB 2538. Each year, there will be an increasing number of jobs for which the State will receive no withholding tax revenue. The bill creates a strong incentive for employers to figure out a way to qualify for the program—so some employers out there will get to keep the withholding tax on salaries being paid, and some will not. And what happens when the PEAK incentive ends and the employer must start remitting withholding tax on those salaries? Will those jobs still exist and stay in Kansas then?

2010 House Bill 2538m Fiscal Note

Amended by House Committee of the Whole

Brief of Bill

2010 House bill 2538, *as Amended by House Committee of the Whole,* would amend and expand the Promoting Employment in Kansas (PEAK) Act .

Section 1 of the bill amends K.S.A. 74-50,210 to eliminate the requirement that companies, in order to qualify for the diversion of withholding taxes, must relocate to Kansas facilities and employment which had previously existed in foreign countries or other states.

Section 2 amends K.S.A. Supp 74-50,211 by adding definitions for "existing business unit", "expanding business unit" "new business unit" and "NAICS code industry average wage". The bill also changes the "country average wage" to "country median wage" in the subsection (c). The existing definition of "new employee" also would be expanded to include persons "maintained" by qualified companies. In addition, all expanding business units satisfying subsection (m)(2) should be eligible to be considered as qualified companies for purposes of the PEAK program. *The House Committee of the Whole amended the definition of "qualified company". A companies has to pay its new employees the county median wage as confirmed by the secretary of commerce in order to receive PEAK program benefits.*

Section 3 of the bill would amend K.S.A. 74-50,212 to loosen the criteria for qualified companies to receive PEAK program benefits. In order to qualify for such benefits, a qualified company shall either (1) establish a new business unit in the state of Kansas and locate the job positions associated with the new business unit in Kansas; or (2) maintain the employees of an existing business unit located in Kansas subsequent to the qualified company's acquisition of such business unit. Under current law, to receive benefits, the qualified company must relocate an existing business facility, office, department or other operation located outside of Kansas and locate the jobs from such business facility, etc to Kansas.

The House Committee of the Whole restored the languages in current law that allowing companies to qualify if only they have contracted with unrelated third parties to perform services as the legal employer of affected employees.

Any qualified company that has established a new business unit and that such business unit is located in a metropolitan county and will hire at least 10 new employees or any qualified company whose new business unit is located in a non-metropolitan county and will hire at least five new employees shall

(1) be eligible to retain 95% of the qualified company's Kansas payroll withholding taxes for such new employees for a period of:

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

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

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(C) seven years if the median wage paid to the new employees is equal to at least 120% of the county median wage; or
(2) be eligible to retain 95% of the qualified company's Kansas payroll withholding taxes for such new employees for a period of five years if the median wage paid to the new employees is equal to at least 100% of the NAICS code industry average wage.

Any qualified company that has established a new business unit and engages in a high-impact project whereby the qualified company will hire at least 100 new employees within two years of commencement of operation shall be eligible to retain 95% of the qualified company's Kansas payroll withholding taxes for such new employees for a period of:
(1) Seven years if the median wage paid to the new employees is equal to at least 100% of the county median wage;
(2) eight years if the median wage paid to the new employees is equal to at least 110% of the county median wage;
(3) nine years if the median wage paid to the new employees is equal to at least 120% of the county median wage; or
(4) ten years if the median wage paid to the new employees is equal to at least 140% of the county median wage.

Any qualified company that maintains the employees of an existing or expanding business unit located in Kansas for a period of two years from the date the qualified company enters into an agreement with the secretary shall be eligible to retain 95% of the qualified company's Kansas payroll withholding taxes for such employees for a period of five years, regardless of the median wage paid to the employees in the unit.

Section 4 of the bill amends K.S.A. 74-50,213 to allow a qualified company seeking PEAK program benefits to participate in the IMPACT program. However, the bill provides that such qualified company shall not be eligible to receive benefits from PEAK program and IMPACT program for the same new employees.

New Section 5 of the bill requires a Legislative Post Audit on the effectiveness of the program to be submitted at the outset of the 2015 session.

New Section 6 of the bill would prohibit members of the Legislature from participation in any PEAK program until after July 1, 2015.

The bill shall be effective after its publication in Kansas statute books.

Fiscal Impact
Passage of this bill will reduce state general fund revenues in fiscal year 2011 by $6.05 million and by $12.35 million in fiscal year 2012.

The House Committee of the Whole amended the previous bill in several places.

The House Committee of the Whole restored the language in current law that allows companies *to qualify if only they have contracted with unrelated third parties to perform services as the legal employer of affected employees. The bill would also compare "median" wage paid to new employees with county "median" wage in determining the qualification of benefits. The previous version of the bill would compare "average" wage paid to new employees with county "median" wage. As a result of this amendment, companies could pay somewhat higher wages to qualify for benefits. These amendments could increase the threshold for benefits.*

However, the House Committee of the Whole also amended the bill to remove the Commerce Secretary's ability to set a floor by which projects could be denied, notwithstanding their meeting of the county median wage or NAICS standards. The Secretary of Commerce would lose the ability to knock out the bad projects that happened to get in because they met some quirk of that county or the NAICS standard (or perhaps were in an area where they set their own NAICS standard).

We believe the net impact of these amendments will not significantly change the fiscal note from what was previously stated.

The following amendments in the previous bill would continue to affect the state general fund:

1) The bill would loosen the criteria for qualified companies to receive PEAK program benefits. Under current law, to receive benefits, the qualified company must relocate an existing business facility, office, department or other operation located outside of Kansas and locate the jobs from such business facility, etc to Kansas. Under the amendment, to qualify for benefits, a qualified company may either establish a new business unit in the state of Kansas and locate the job positions in Kansas or retain the employees of an existing business unit located in Kansas following an acquisition. Such business does not need to relocate. It can simply expand by either establishing a new business unit or retaining an existing business unit following an acquisition. Relocating to Kansas would still qualify for benefits.

2) The bill would use median county wage or NAICS code industry average wage instead of average county wage in deciding whether a company is eligible to receive benefit. The median wage is also used in determining the number of years a qualified company may retain withholding tax. According to the Social Security Administration (http://www.ssa.gov/OACT/COLA/central.html), the average national wage is about $39,652.61 while the median wage is only $26,514.38. As a result of this amendment, certain companies that would not qualify for the PEAK benefits because the average wage paid to the new employee is lower than the average county wage or NAICS code industry average wage would now qualify. This change would also significantly increase the total amount of withholding tax a company can retain over a number of years. *The bill would also compare "median" wage paid to new employees with county "median" wage in determining the qualification of benefits. The previous version of the bill would compare "average" wage paid to new employees with county "median" wage. As a result of this amendment, companies could pay somewhat higher wages to qualify for benefits.*

Based on employment information from the Kansas department of labor, it is estimated there are currently about 750,000 jobs in Kansas that would qualify for this program.

Assuming about 4,000 jobs would qualify each year for this program. Using a statewide average wage of $40,000 and an average withholding rate of 5%, the withholding impact to the state general fund in fiscal year 2010 would be $8.0 million (4,000 x $40,000 x 5%). Assuming a 2% growth in wages, the fiscal impacts for the next five years are shown below:

Fiscal Year	2011	2012	2013	2014	2015
	$ 8.00	$ 8.16	$ 8.32	$ 8.49	$ 8.66
		$ 8.16	$ 8.32	$ 8.49	$ 8.66
			$ 8.32	$ 8.49	$ 8.66
				$ 8.49	$ 8.66
					$ 8.66
Withholding Impact (millions)	$ 8.00	$ 16.32	$ 24.97	$ 33.96	$ 43.30
Withholding Impact Under Current Law (millions)	$1.95	$3.97	$6.08	$8.27	$10.54
Fiscal Impact (millions)	-$6.05	-$12.35	-$18.89	-$25.69	-$32.76

Section 3 would allow a qualified company seeking PEAK program benefits to participate in the IMPACT program, as long as such company do not receive benefits from PEAK program and IMPACT program for the same new employees. This may increase the IMPACT program cost. It does not, however, affect tax revenue or the state general fund.

Administrative Impact
The administrative cost can be absorbed with existing resources.

Administrative Problems and Comments
None.

Taxpayer/Customer Impact
None.

Legal Impact
None.

KANSAS
DEPARTMENT OF COMMERCE

Mark Parkinson, Governor
William R. Thornton, Acting Secretary

KansasCommerce.com

Testimony on HB 2538
to
The Senate Commerce Committee
By William R. Thornton
Acting Secretary
Kansas Department of Commerce
March 9, 2010

Chairman Brownlee and Members of the Committee:

First of all, I apologize that I am unable to attend the hearing on this bill due to a previous commitment in Washington, DC.

The Promoting Employment Across Kansas act (PEAK) was passed last year at the end of the session. The bill was passed by the House—without a full hearing in the Senate—and adopted as a conference committee report in both houses. The program is a new one, administered by the Department of Commerce, and to date has resulted in one signed agreement with a company. Other companies have expressed interest and information has been exchanged but only the one has been finalized.

Although PEAK was enacted just last year, significant amendments that expand the scope and range of the act have been proposed this session. We expressed concerns over several amendments and proposed more acceptable language on several material issues. We worked diligently and in good faith to address our concerns over the degree to which the wage standards have been lowered in the bill. Our primary concern is a company may qualify for benefits even though it may not be a good investment of state resources and there is no discretion available to the Secretary to regulate program awards. While some of those proposed refinements were retained by the House, much of what made the bill acceptable to Commerce was removed during the House actions.

Other programs administered by Commerce—like IMPACT—allow the department to have some discretion to review the potential return on investment and to evaluate the project on the basis of relevant economic development factors. On the other hand, this bill significantly expands a program that had already limited Commerce to the role of merely administering the program.

The version that was passed by the House enlarges this program to entitle applicants for approval, even those who may benefit from the unintended consequences of wage thresholds that seem very low. For this reason, Commerce is not in support of the bill. Thank you.

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Senate Commerce Committee
Date: March 10, 2010
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