

CHAPTER 122
HOUSE BILL No. 2324

AN ACT concerning sales taxation; relating to exemptions; Kansas enterprise zone act; requirements for certain retail businesses; sales tax for community improvement districts; community improvement district act; amending K.S.A. 2008 Supp. 74-50,115 and repealing the existing section.

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

Section 1. K.S.A. 2008 Supp. 74-50,115 is hereby amended to read as follows: 74-50,115. (a) A manufacturing business may be eligible for a sales tax exemption under the provisions of subsection (cc) of K.S.A. 79-3606, and amendments thereto, if the manufacturing business complies with the following requirements:

(1) A manufacturing business shall provide documented evidence of job expansion involving the employment of at least two additional full-time employees; and

(2) a manufacturing business located within the state of Kansas that has documented evidence of job expansion as provided in paragraph (1), which relocates in another city or county within the state of Kansas must receive approval from the secretary prior to qualifying for the sales tax exemption in subsection (cc) of K.S.A. 79-3606, and amendments thereto, except that approval by the secretary shall not be required if the manufacturing business relocates within the same city.

(b) A nonmanufacturing business may be eligible for a sales tax exemption under the provisions of subsection (cc) of K.S.A. 79-3606, and amendments thereto, if the nonmanufacturing business complies with the following requirements:

(1) A nonmanufacturing business shall provide documented evidence of job expansion involving the employment of at least five additional full-time employees; and

(2) a nonmanufacturing business located within the state of Kansas that has documented evidence of job expansion as provided in paragraph (1), which relocates in another city or county within the state of Kansas must receive approval from the secretary prior to qualifying for the sales tax exemption in subsection (cc) of K.S.A. 79-3606, and amendments thereto, except that approval by the secretary shall not be required if the nonmanufacturing business relocates within the same city.

(c) A retail business may qualify for the sales tax exemption under subsection (cc) of K.S.A. 79-3606, and amendments thereto, if the retail business complies with the following requirements:

(1) A retail business shall provide documented evidence of job expansion involving the employment of at least two additional full-time employees; and

(2) (A) such retail business locates or expands to a city having a population of 2,500 or less, as determined by the latest ~~United States federal census~~ *Kansas division of budget revised population numbers that are certified to the secretary of state*, or (B) such retail business locates or expands ~~prior to July 1, 2010~~, to a location outside a city in a county having a population of 10,000 or less, as determined by the latest ~~United States federal census~~ *Kansas division of budget revised population numbers that are certified to the secretary of state*.

(d) Any person constructing, reconstructing, remodeling or enlarging a facility which will be leased in whole or in part for a period of five years or more, or commencing on the effective date of this act and ending on April 1, 2007, any person constructing, reconstructing, remodeling or enlarging a facility located within Saline county which title of such facility will be conveyed, to a business that would be eligible for a sales tax exemption hereunder if such business had constructed, reconstructed, enlarged or remodeled such facility or portion thereof itself shall be entitled to the sales tax exemption under the provisions of subsection (cc) of K.S.A. 79-3606, and amendments thereto. When such person leases less than the total facility to an eligible business, a project exemption certificate may be granted on: (1) The total cost of constructing, reconstructing, remodeling or enlarging, the facility multiplied by a fraction given by dividing the number of leased square feet eligible for the sales tax exemption by the total square feet being constructed, reconstructed, remodeled or enlarged; or (2) the actual cost of constructing, reconstructing, remodeling or enlarging that portion of the facility to be occupied by

the eligible business, as the person may elect.

(e) A business may qualify for a sales tax exemption under subsection (cc) of K.S.A. 79-3606, and amendments thereto, without regard to any of the foregoing requirements of this section if it is certified as a qualified firm by the secretary of commerce pursuant to K.S.A. 74-50,131, and amendments thereto, and is entitled to the corporate tax credit established in K.S.A. 74-50,132, and amendments thereto, or has received written approval for participation and has participated, during the tax year in which the exemption is claimed, in training assistance by the department of commerce under the Kansas industrial training, Kansas industrial re-training or state of Kansas investments in lifelong learning program.

(f) The secretary may adopt rules and regulations to implement and administer the provisions of this section.

New Sec. 2. (a) The provisions of sections 2 through 12, and amendments thereto, shall be known and may be cited as the community improvement district act.

(b) The powers conferred by this act are for economic development purposes and any other purpose for which public money may be expended.

New Sec. 3. As used in this act, and amendments thereto, the following words and phrases shall have the following meanings unless a different meaning clearly appears from the context:

(a) "Act" means the provisions of sections 2 through 12, and amendments thereto.

(b) "Assessments" means special assessments imposed and levied pursuant to the provisions of this act.

(c) "Bonds" means special obligation bonds, special obligation notes, full faith and credit bonds or full faith and credit notes payable solely from the sources described in section 9, and amendments thereto, issued by a municipality in accordance with the provisions of this act.

(d) "Community improvement district sales tax" means the tax authorized by section 7, and amendments thereto.

(e) "Consultant" means engineers, architects, planners, attorneys, financial advisors and other persons deemed competent to advise and assist in the planning, making and financing of projects.

(f) "Cost" means: (1) All costs necessarily incurred for the preparation of preliminary reports, the preparation of plans and specifications, the preparation and publication of notices of hearings, resolutions, ordinances and other proceedings relating to the creation or administration of the district or the issuance of bonds therefore, necessary fees and expenses of consultants, interest accrued on borrowed money during the period of construction and the amount of a reserve fund for the bonds, together with the cost of land, materials, labor, and other lawful expenses incurred in planning and doing any project and may include a charge of not to exceed 5% of the total cost of the project or the cost of work done by the municipality to reimburse the municipality for the services rendered by the municipality in the administration and supervision of such project by its general officers; and (2) in the case of property and projects already owned by the municipality and previously financed by the issuance of bonds, "cost" means costs authorized by K.S.A. 10-116a, and amendments thereto.

(g) "District" means a community improvement district created pursuant to this act.

(h) "Governing body" means the governing body of a city or the board of county commissioners of a county.

(i) "Municipality" means any city or county.

(j) "Newspaper" means the official newspaper of the municipality.

(k) "Owner" means the owner or owners of record, whether resident or not, of real property within the district.

(l) "Pay-as-you-go financing" means a method of financing in which the costs of a project are financed without notes or bonds, and the costs of such project are thereafter reimbursed as moneys are deposited in the district fund described in section 10, and amendments thereto.

(m) "Project" means:

(1) Any project within the district to acquire, improve, construct, demolish, remove, renovate, reconstruct, rehabilitate, maintain, restore, replace, renew, repair, install, relocate, furnish, equip or extend:

(A) Buildings, structures and facilities;

(B) sidewalks, streets, roads, interchanges, highway access roads, in-

tersections, alleys, parking lots, bridges, ramps, tunnels, overpasses and underpasses, traffic signs and signals, utilities, pedestrian amenities, abandoned cemeteries, drainage systems, water systems, storm systems, sewer systems, lift stations, underground gas, heating and electrical services and connections located within or without the public right-of-way, water mains and extensions and other site improvements;

(C) parking garages;

(D) streetscape, lighting, street light fixtures, street light connections, street light facilities, benches or other seating furniture, trash receptacles, marquees, awnings, canopies, walls and barriers;

(E) parks, lawns, trees and other landscape;

(F) communication and information booths, bus stops and other shelters, stations, terminals, hangers, rest rooms and kiosks;

(G) paintings, murals, display cases, sculptures, fountains and other cultural amenities;

(H) airports, railroads, light rail and other mass transit facilities; and

(I) lakes, dams, docks, wharfs, lakes or river ports, channels and levies, waterways and drainage conduits.

(2) Within the district, to operate or to contract for the provision of music, news, child-care, or parking lots or garages, and buses, minibuses or other modes of transportation;

(3) Within the district, to provide or contract for the provision of security personnel, equipment or facilities for the protection of property and persons;

(4) Within the district, to provide or contract for cleaning, maintenance and other services to public or private property;

(5) Within the district, to produce and promote any tourism, recreational or cultural activity or special event, including, but not limited to, advertising, decoration of any public place in the district, promotion of such activity and special events and furnishing music in any public place;

(6) Within the district, to support business activity and economic development, including, but not limited to, the promotion of business activity, development and retention and the recruitment of developers and business;

(7) Within the district, to provide or support training programs for employees of businesses; and

(8) To contract for or conduct economic impact, planning, marketing or other studies.

New Sec. 4. (a) In addition to any other power provided by law and as a complete alternative to all other methods provided by law, the governing body of any municipality may create a district as provided by this act for the purpose of financing projects. Under this section, a municipality may create a district, or may modify a district previously created under this section, upon receipt of a petition that is signed by the owners of all of the land area within the proposed district, and is both (1) seeking financing only by assessments and (2) not seeking the issuance of full faith and credit bonds pursuant to this act. The petition shall contain:

(A) The general nature of the proposed project;

(B) the estimated cost of the project;

(C) the proposed method of financing the project;

(D) the proposed amount and method of assessment;

(E) a map of the proposed district; and

(F) a legal description of the boundaries of the proposed district.

(b) Names may not be withdrawn from the petitions by the signers thereof after the governing body commences consideration of the petitions or later than seven days after the filing of such petition with the clerk of the municipality, whichever occurs first. The petition shall contain a notice that: (1) The names of the signers may not be withdrawn after such a period of time; and (2) the signers consent to any assessments to the extent described therein without regard to benefits conferred by the project.

(c) Upon filing of the petition pursuant to this section, the governing body may proceed without notice or a hearing to make findings by resolution or ordinance as to the nature, advisability and estimated cost of the project, the boundaries of the district and the amount and method of assessment. Upon making such findings, the governing body by majority vote may authorize the project in accordance with such findings as to the advisability of the project. The resolution or ordinance shall be effective upon publication once in the newspaper.

(d) The district boundaries and the method of financing for the project shall not require that all property that is benefited by the project, whether the benefited property is within or without the district, be included in the district or be subject to an assessment.

(e) Following authorization of the project, the ordinance or resolution establishing the district shall be submitted for recording in the office of the register of deeds of the county in which the district is located.

New Sec. 5. (a) In addition to any other power provided by law and as a complete alternative to all other methods provided by law, the governing body of any municipality may create a district as provided by this act for the purpose of financing projects. As an alternative to the requirements and procedures described in section 4, and amendments thereto, under this section, a municipality may create a district, or may modify a district previously created under this section, upon receipt of a petition that is signed by the owners of more than 55% of the land area within the proposed district, and signed by owners collectively owning more than 55% by assessed value of the land area within the proposed district. Under this section, the petition may be seeking financing in whole or in part by a proposed community improvement district sales tax authorized by section 7, and amendments thereto, or seeking the issuance of full faith and credit bonds authorized by section 12, and amendments thereto, or both. The petition shall contain:

- (1) The general nature of the proposed project;
- (2) the estimated cost of the project;
- (3) the proposed method of financing the project including, if applicable, the issuance of full faith and credit bonds;
- (4) the proposed amount and method of assessment, if any;
- (5) the proposed amount of community improvement district sales tax, if any;
- (6) a map of the proposed district; and
- (7) a legal description of the proposed district.

(b) Names may not be withdrawn from the petitions by the signers thereof after the governing body commences consideration of the petitions or later than seven days after the filing of such petition with the clerk of the municipality, whichever occurs first. The petition shall contain a notice that: (1) The names of the signers may not be withdrawn after such a period of time; and (2) if applicable, the signers consent to any assessments to the extent described therein without regard to benefits conferred by the project.

(c) Upon filing of the petition pursuant to this section, the municipality shall adopt a resolution to give notice of a public hearing on the advisability of creating or modifying the district. Such resolution shall be published at least once each week for two consecutive weeks in the newspaper and shall be sent by certified mail to all owners. The second publication of such resolution shall occur at least seven days prior to the date of hearing and the certified mailed notice shall be sent at least ten days prior to the date of hearing. Such resolution shall contain the following information:

- (1) The time and place of the hearing;
- (2) the general nature of the proposed project;
- (3) the estimated cost of the project;
- (4) the proposed method of financing the project including, if applicable, the issuance of full faith and credit bonds;
- (5) the proposed amount of the community improvement district sales tax, if any;
- (6) the proposed amount and method of assessment, if any;
- (7) a map of the proposed district; and
- (8) a legal description of the proposed district.

(d) The hearing on the advisability of creating or modifying the district may be adjourned from time to time. Following the hearing or any continuation thereof, the governing body by majority vote may create the district by adoption of an ordinance or resolution. Such ordinance or resolution shall authorize the project, approve the estimated cost of the project, contain the legal description of the district, contain a map of the district, levy the community improvement district sales tax, if applicable, approve the maximum amount and method of assessment, if applicable, and approve the method of financing including, if applicable, the issuance of full faith and credit bonds. Such ordinance or resolution shall become effective upon publication once in the newspaper.

(e) The district boundaries and the method of financing for the project shall not require that all property that is benefited by the project, whether the benefited property is within or without the district, be included in the district or be subject to an assessment or the community improvement district sales tax.

(f) Following authorization of the project, the ordinance or resolution establishing the district shall be submitted for recording in the office of the register of deeds of the county in which the district is located.

New Sec. 6. (a) In addition to any other power provided by law and as a complete alternative to all other methods provided by law, the governing body may make, or cause to be made, projects identified in the petition submitted pursuant to either section 4 or section 5, and amendments thereto, and may levy and collect special assessments upon property in the district and provide for the payment of all or any part of the cost of the project out of the proceeds of such special assessments. If special assessments shall be levied to finance all or a portion of the cost of a project, the municipality shall follow the procedures in K.S.A. 12-6a01 et seq., and amendments thereto, to levy such assessments except that no assessments may be levied against the municipality at large and annual installments of the assessments may be levied as provided in subsection (b).

(b) If the method of financing for the project includes payment from the sources described in subsections (c) or (e) of section 9, and amendments thereto, the ordinance or resolution of the municipality that authorizes the levy of special assessments may provide that the annual installments of such assessment for any year may be reduced or eliminated to the extent that, prior to the date the municipality certifies the tax levy of the municipality to the county clerk pursuant to K.S.A. 79-1801, and amendments thereto, the municipality has received sufficient funds from the sources described in subsections (c) and (e) of section 9, and amendments thereto, to pay the debt service on any bonds issued under the provisions of this act, and amendments thereto, for the project which would have been paid by such annual installment. The municipality is not required to refund any prepayment of assessments after such prepayment is made to the municipality, and any prepayment of assessments under this section shall be in compliance with the provisions of K.S.A. 10-115, and amendments thereto.

New Sec. 7. (a) In addition to and notwithstanding any limitations on the aggregate amount of the retailers' sales tax contained in K.S.A. 12-187 through 12-197, and amendments thereto, any municipality may impose a community improvement district sales tax on the selling of tangible personal property at retail or rendering or furnishing services taxable pursuant to the provisions of the Kansas retailers' sales tax act, and amendments thereto, within a community improvement district for purposes of financing a project in such district in any increment of .10% or .25% not to exceed 2% and pledging the revenue received therefrom to pay the bonds issued for the project or to reimburse the cost of the project pursuant to pay-as-you-go financing. In the event bonds are issued to finance a project or refunding bonds issued therefore, the community improvement district sales tax imposed pursuant to this section shall expire no later than the date such bonds shall mature. In the event pay-as-you-go financing is utilized, the community improvement district sales tax shall expire 22 years from the date the state director of taxation begins collecting such tax or when the project bonds or pay-as-you-go costs have been paid. Except as otherwise provided by the provisions of section 3 et seq., and amendments thereto, the tax authorized by this section shall be administered, collected and subject to the provisions of K.S.A. 12-187 through 12-197, inclusive, and amendments thereto.

(b) Upon receipt of a certified copy of the resolution or ordinance authorizing the levy of the community improvement district sales tax pursuant to this section, the state director of taxation shall cause such tax to be collected in the district at the same time and in the same manner provided for the collection of the state retailers' sales tax. All of the taxes collected under the provisions of this act shall be remitted by the secretary of revenue to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury, and the state treasurer shall credit 2% of all taxes so collected to the community improvement district sales tax administration fund,

which fund is hereby established in the state treasury, to defray the expenses of the department of revenue in administration and enforcement of the collection thereof. The aggregate amount of moneys credited to the community improvement district sales tax administration fund shall not exceed \$60,000 in any state fiscal year. The remainder of such taxes shall be credited to the community improvement district sales tax fund, which fund is hereby established in the state treasury. All moneys in the community improvement district sales tax fund shall be remitted at least quarterly by the state treasurer, on instruction from the secretary of revenue, to the treasurers of those municipalities which are qualified to receive disbursements from such fund for the amount collected within such municipality. Any refund due on any community improvement district sales tax collected pursuant to this section shall be paid out of the community improvement district sales tax refund fund which is hereby established in the state treasury and reimbursed by the director of taxation from collections of the community improvement district sales tax authorized by this section. Community improvement district sales tax received by a municipality pursuant to this section shall be deposited in the community improvement district sales tax fund created pursuant to section 10, and amendments thereto.

(c) Notwithstanding any other provisions of law to the contrary, copies of all retailers' sales and use tax returns filed with the secretary of revenue in connection with a district for which sales or use tax revenues, or both, are pledged or otherwise intended to be used in whole or in part for the payment of bonds issued to finance costs of a project, shall be provided by the secretary of revenue to the bond trustee, escrow agent or paying agent for such bonds upon a written request of the municipality within 15 days of receipt by the secretary of revenue. The bond trustee, escrow agent or paying agent shall keep such retailers' sales and use tax returns and the information contained therein confidential, but may use such information for purposes of allocating and depositing such sales and use tax revenues in connection with the bonds used to finance costs of a project. Except as otherwise provided herein, the sales and use tax returns received by the bond trustee, escrow agent or paying agent shall be subject to the provisions of K.S.A. 79-3614, and amendments thereto.

New Sec. 8. No suit to set aside the assessments or otherwise question the validity of the proceedings for the creation of the district or the authorization of the project shall be brought after the expiration of 30 days from the publication of the ordinance or resolution creating the district. No suit to set aside the community improvement district sales tax shall be brought after the expiration of 30 days from the publication of the ordinance or resolution declaring the intent to impose the community improvement district sales tax. No protest petition pertaining to the issuance of full faith and credit bonds, as described in section 12, and amendments thereto, shall be brought after the expiration of 60 days following the date of the public hearing described in section 5, and amendments thereto.

New Sec. 9. The cost of all or a portion of any project authorized pursuant to this act shall be paid from all or any of the following sources:

(a) A pledge of special assessments imposed in the district pursuant to this act which have been paid in full prior to the date set aside by the governing body as provided in K.S.A. 12-6a10, and amendments thereto.

(b) A pledge of special assessments imposed in the district pursuant to this act, to be paid in installments.

(c) A pledge of all of the revenue received from the community improvement district sales tax authorized by section 7, and amendments thereto.

(d) A pledge of a municipality's full faith and credit to use its ad valorem taxing authority for the repayment of full faith and credit bonds issued pursuant to section 12, and amendments thereto.

(e) Any other funds appropriated by the municipality for the purpose of paying project costs including the principal and interest of bonds issued pursuant to this act.

New Sec. 10. A separate fund shall be created for each district and such fund shall be identified by a suitable title. Community improvement district sales tax remitted to the municipality pursuant to section 7, and amendments thereto, special assessments paid to the municipality pursuant to this act, proceeds from the sale of bonds issued pursuant to this act, and any other moneys appropriated by the governing body for the

purpose of paying project costs, including the principal of and interest on bonds issued pursuant to this act, shall be credited to such fund. Such fund shall be used solely to pay the cost of the project through either the issuance of bonds or pay-as-you-go financing, and shall not be limited by the estimated cost amount listed in the ordinance or resolution authorizing the project. In the event moneys remain in the fund after the expiration of the community improvement district sales tax, such moneys shall continue to be used solely to pay the cost of the project. Upon payment of all project costs and principal of and interest on any bonds issued for such district, the municipality shall have the authority to spend any moneys remaining in such fund for the purposes for which local sales tax receipts may be spent.

New Sec. 11. (a) Any municipality may issue special obligation bonds in one or more series to finance any project in accordance with the provisions of this act. Such bonds shall be made payable, both as to principal and interest solely from a pledge of the sources of funds described in subsections (a), (b), (c) and (e) of section 9, and amendments thereto. The municipality may pledge such revenue to the repayment of such bonds prior to, simultaneously with or subsequent to the issuance of such bonds, except for any revenues received under the provisions of subsection (e) of section 9 and amendments thereto, which revenues are subject to annual appropriation.

(b) Bonds issued pursuant to this section shall not be general obligations of the municipality, give rise to a charge against its general credit or taxing powers, or be payable out of any funds or properties other than any of those set forth in subsections (a), (b), (c) and (e) of section 9, and amendments thereto, and such bonds shall so state on their face.

(c) Bonds issued pursuant to this section shall be special obligations of the municipality and are declared to be negotiable instruments. Such bonds shall be executed by the authorized representatives of the municipality and sealed with the corporate seal of the municipality. All details pertaining to the issuance of the bonds and terms and conditions thereof shall be determined by ordinance or resolution of the municipality. The provisions of K.S.A. 10-106, and amendments thereto, requiring a public sale of bonds shall not apply to bonds issued under this section. All bonds issued pursuant to this section and all income or interest therefrom shall be exempt from all state taxes except inheritance taxes. Such bonds shall contain none of the recitals set forth in K.S.A. 10-112, and amendments thereto. Such bonds shall contain the following recitals: The authority under which such bonds are issued; that such bonds are in conformity with the provisions, restrictions and limitations thereof and that such bonds and the interest thereon are to be paid from the money and revenue received as provided in this section. Such bonds shall mature in no more than 22 years.

(d) Any municipality issuing bonds under the provisions of this section may refund all or part of such bonds pursuant to the provisions of K.S.A. 10-116a, and amendments thereto.

(e) Bonds issued under the provisions of this section shall be in addition to and not subject to any statutory limitation of bonded indebtedness imposed on such municipality.

New Sec. 12. (a) Any municipality may issue full faith and credit bonds in one or more series to finance any project in accordance with the provisions of this act and to refinance or refund any notes or bonds issued pursuant to this act. Bonds issued pursuant to this section shall be general obligations of the municipality and give rise to a charge against its general credit and taxing powers, and such bonds shall so state on their face. Such bonds shall be made payable, both as to principal and interest solely from a pledge of the sources of funds described in section 9, and amendments thereto, including a pledge of a municipality's full faith and credit to use its ad valorem taxing authority for the repayment thereof in the event all other authorized sources of revenue are not sufficient. The municipality may pledge such revenue to the repayment of such bonds prior to, simultaneously with or subsequent to the issuance of such bonds.

(b) Bonds issued pursuant to this section shall be general obligations of the municipality and are declared to be negotiable instruments. Such bonds shall be executed by the authorized representatives of the municipality and sealed with the corporate seal of the municipality. All details pertaining to the issuance of the bonds and terms and conditions thereof shall be determined by ordinance or resolution of the municipality. The

provisions of K.S.A. 10-106, and amendments thereto, requiring a public sale of bonds shall not apply to bonds issued under this section. All bonds issued pursuant to this section and all income or interest therefrom shall be exempt from all state taxes except inheritance taxes. Such bonds shall contain the recitals set forth in K.S.A. 10-112, and amendments thereto. Such bonds shall mature in no more than 22 years. Any municipality issuing bonds under the provisions of this section may refund all or part of such bonds pursuant to the provisions of K.S.A. 10-427, and amendments thereto.

(c) The amount of the full faith and credit bonds issued and outstanding under this act which exceeds 3% of the assessed valuation of the municipality shall be within the bonded debt limit applicable to such municipality.

(d) If, within 60 days following the date of the public hearing described in section 5, and amendments thereto, a protest petition signed by 5% of the qualified voters of the municipality is filed with the municipality's clerk in accordance with the provisions of K.S.A. 25-3601 et seq., and amendments thereto, no full faith and credit bonds shall be issued until the issuance of the full faith and credit bonds is approved by a majority of the voters voting at an election thereon. The failure of the voters to approve the issuance of full faith and credit bonds shall not prevent a municipality from issuing special obligation bonds.

Sec. 13. K.S.A. 2008 Supp. 74-50,115 is hereby repealed.

Sec. 14. This act shall take effect and be in force from and after its publication in the statute book.

Approved April 23, 2009.
