

CHAPTER 53
SENATE BILL No. 108

AN ACT concerning the economic revitalization and reinvestment act; relating to the secretary of commerce and the Kansas development finance authority; authorizing the issuance of bonds for certain economic development projects; amending K.S.A. 2008 Supp. 74-50,136 and repealing the existing section.

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

Section 1. K.S.A. 2008 Supp. 74-50,136 is hereby amended to read as follows: 74-50,136. (a) The provisions of this section shall be known and may be cited as the “economic revitalization and reinvestment act.”

(b) The purpose of the economic revitalization and reinvestment act is to foster Kansas employment by encouraging product development and engineering leading to new manufactured products in Kansas.

(c) As used in this act:

(1) “Base eligibility period” means the three taxable years immediately preceding the date of application for benefits under this act.

(2) “Eligible aviation business” means a person, corporation, partnership or other entity engaged in the aviation manufacturing or service industry and doing business in Kansas that satisfies conditions imposed by the secretary, which may include, among other conditions, that the person, corporation, partnership or other entity:

(A) Paid at least ~~\$300,000,000~~ \$150,000,000 in average annual gross Kansas compensation, according to reports filed with the secretary of labor, during the base eligibility period;

(B) paid at least \$50,000 of average annual gross compensation per Kansas employee during the base eligibility period;

(C) has invested at least \$500,000,000 in real and tangible personal property located within and currently used in the operation of a business in Kansas; and

(D) is described by the north American industrial classification system as being in the manufacturing or service sector.

(3) “Eligible aviation project” means a research, development, engineering or manufacturing project (A) undertaken by an eligible aviation business relating to the development of a new or improved business component or product and may include, but not be limited to, product development and design, applied research, manufacturing, improvement, replacement or acquisition of real or personal property and modernization and retooling of existing property in Kansas, (B) for which the eligible aviation business proposes to invest not less than \$500,000,000 in Kansas in direct connection with the eligible aviation project of not less than \$500,000,000 in Kansas and (C) for which the eligible aviation business proposes to employ up to 4,000 full-time employees in Kansas, as defined in K.S.A. 74-50,114, and amendments thereto.

(4) “Eligible business” means a person, corporation, partnership or other entity doing business in Kansas that satisfies conditions imposed by the secretary, which may include, among other conditions, that the person, corporation, partnership or other entity:

(A) Paid at least \$600,000,000 in average annual gross Kansas compensation, according to reports filed with the secretary of labor, during the base eligibility period; and

(B) paid at least \$50,000 of average annual gross compensation per Kansas employee during the base eligibility period; and

(C) has invested at least \$1,000,000,000 in real and tangible personal property located within and currently used in the operation of a business in Kansas; and

(D) is described by north American industrial classification system as being in the manufacturing sector.

(5) “Eligible project” means a research, development, engineering or manufacturing project (A) undertaken by an eligible business relating to the development of a new or improved business component or product and may include, but not be limited to, product development and design, applied research, manufacturing, improvement, replacement or acquisition of real or personal property and modernization and retooling of existing property in Kansas, (B) for which the eligible business proposes to invest not less than \$500,000,000 in Kansas in direct connection with the eligible project of not less than \$500,000,000 in Kansas and (C) for which the eligible business proposes to employ up to 4,000 full-time employees

in Kansas, as defined in K.S.A. 74-50,114, and amendments thereto.

(6) “Eligible wind or solar energy business” means a person, corporation, partnership or other entity engaged in the wind or solar energy manufacturing industry and doing business in Kansas that satisfies conditions imposed by the secretary, which may include among other conditions, that the person, corporation, partnership or other entity:

(A) Pay at least \$32,500 of average annual compensation per Kansas employee; and

(B) is described by the North American industrial classification system as being in the manufacturing sector.

(7) “Eligible wind or solar energy project” means a research, development, engineering or manufacturing project (A) undertaken by an eligible wind or solar energy business relating to the production of a business component or product and may include, but not be limited to, product development and design, applied research, manufacturing, improvement, replacement or acquisition of real or personal property and modernization and retooling of existing property in Kansas, (B) for which the eligible wind or solar energy business proposes to invest not less than \$30,000,000 in Kansas in direct connection with the eligible wind or solar energy project of not less than \$30,000,000 in Kansas and (C) for which the eligible wind or solar energy business proposes to employ at least 200 full-time employees in Kansas within five years, as defined in K.S.A. 74-50,114, and amendments thereto.

~~(8)~~ (8) “Gross compensation” means gross wages and benefits paid to or on behalf of employees receiving wages.

~~(9)~~ (9) “Secretary” means the secretary of commerce.

(d) A person, corporation, partnership or other entity proposing to undertake an eligible project ~~or~~, eligible aviation project ~~or~~ eligible wind or solar energy project may apply to the secretary to enter into an agreement for benefits under this act. The application shall include (1) evidence that the applicant is an “eligible business” ~~or~~, “eligible aviation business” or “eligible wind or solar energy business” as defined in subsection (c) and (2) a detailed description of the eligible project ~~or~~, eligible aviation project ~~or~~ eligible wind or solar energy project.

(e) Upon receipt of an application described in subsection (d), if the secretary finds that the application is from an eligible business ~~or~~, eligible aviation business ~~or~~ eligible wind or solar energy business and that the project constitutes an eligible project ~~or~~, eligible aviation project ~~or~~ eligible wind or solar energy project, the secretary may enter into an agreement with the eligible business ~~or~~, eligible aviation business ~~or~~ eligible wind or solar energy business for benefits under this act. Such agreement for benefits shall be subject to review and approval of the state finance council created by K.S.A. 75-3708, and amendments thereto. The agreement shall commit the secretary to request that the Kansas development finance authority issue bonds pursuant to the Kansas development finance authority act, K.S.A. 74-8901 et seq., and amendments thereto, to finance the eligible project for the benefit of the eligible business in an aggregate principal amount not to exceed \$500,000,000, plus costs of issuance, costs of credit enhancement, reserve funds and capitalized interest, or in the case of an eligible aviation project in a principal amount not to exceed \$33,000,000 for a single eligible aviation project ~~or in the case of an eligible wind or solar energy project in a principal amount not to exceed \$5,000,000 for a single eligible wind or solar energy project~~ and in an aggregate principal amount not to exceed \$150,000,000 for all eligible aviation, wind or solar energy projects, plus costs of issuance, costs of credit enhancement, reserve funds and capitalized interest, and shall commit the eligible business ~~or~~, eligible aviation business ~~or~~ eligible wind or solar energy business to pay the principal of and interest on such obligations, except that during the period from the issuance of such bonds through the maturity of such obligations but not to exceed 20 years revenue realized from withholding upon Kansas wages paid by the eligible business ~~or~~, eligible aviation business ~~or~~ eligible wind or solar energy business pursuant to K.S.A. 79-3294 et seq., and amendments thereto, which is necessary to pay the principal and interest on such obligations shall be credited to the special economic revitalization fund created in subsection (h), and shall be transferred by the state treasurer to pay principal and interest on such obligations as provided by law. The agreement shall further specifically provide that if the revenue from the withholding upon Kansas wages is insufficient to pay principal and interest on the

bonds, the eligible business ~~or~~, eligible aviation business *or eligible wind or solar energy business* shall remain obligated to make such payments. The terms and conditions with respect to the obligations shall be set forth in the agreement or in the financing documents relating to the issuance of the bonds. In the event the eligible business ~~or~~, eligible aviation business *or eligible wind or solar energy business* terminates, cancels or reduces the scope of the eligible project ~~or~~, eligible aviation project *or eligible wind or solar energy project* approved by the secretary, the agreement shall provide that with respect to debt service, the eligible business ~~or~~, eligible aviation business *or eligible wind or solar energy business* shall remain responsible for payment of the entire outstanding principal as well as any interest still outstanding, and no moneys remaining in the special economic revitalization fund shall be made available for the purpose of paying the remaining principal and interest portion of the eligible business' ~~or~~, eligible aviation business' *or eligible wind or solar energy business'* debt service obligation.

(f) Income tax refunds and balances due resulting from withholding upon Kansas wages paid by the eligible business ~~or~~, eligible aviation business *or eligible wind or solar energy business* pursuant to K.S.A. 79-3294 et seq., and amendments thereto, shall be reconciled on at least an annual basis by a method defined in the agreement described in subsection (e).

(g) The Kansas development finance authority is hereby authorized to issue obligations, for the purpose of financing the eligible project ~~or~~, eligible aviation project *or eligible wind or solar energy project* provided in subsection (e), in a principal amount not to exceed the amount specified in subsection (e). The maximum maturity of bonds issued pursuant to this act shall be 20 years, unless the secretary shall find and determine that a maturity greater than 20 years, but in no event greater than 30 years, is necessary for economic feasibility of the eligible project ~~or~~, eligible aviation project *or eligible wind or solar energy* of the eligible business ~~or~~, eligible aviation business *or eligible wind or solar energy business*.

(h) The state treasurer shall credit all revenue collected or received from withholding upon Kansas wages paid by a taxpayer which is an eligible business or eligible aviation business with respect to an eligible project ~~or~~, eligible aviation project *or eligible wind or solar energy project*, as certified by the secretary, to the special economic revitalization fund, which fund is hereby created in the custody of the state treasurer but shall not be a part of the state general fund. Distributions from the special economic revitalization fund shall be used to pay principal and interest on the bonds as authorized pursuant to this act and shall not be subject to appropriation. On or before the 10th day of each month, the director of accounts and reports shall transfer from the state general fund to the special economic revitalization fund interest earnings based on: (1) The average daily balance of moneys in the special economic revitalization fund for the preceding month; and (2) the net earnings rate of the pooled money investment portfolio for the preceding month. The provisions of this section shall expire when all principal and interest on obligations issued for the purpose of financing all or a portion of the costs of an eligible project ~~or~~, eligible aviation project *or eligible wind or solar energy project* has been paid. Moneys credited to the special economic revitalization fund in accordance with the foregoing provisions shall be distributed to or on the order of the Kansas development finance authority to pay principal and interest on bonds issued to finance an eligible project ~~or~~, eligible aviation project *or eligible wind or solar energy project*. The state treasurer shall make such distributions on such dates as mutually agreed to by the Kansas development finance authority, the paying agent for such obligations and the state treasurer. The total of all distributions under this section shall not exceed an amount determined to be sufficient to pay the principal and interest on such bonds.

(i) The eligible business ~~or~~, eligible aviation business *or eligible wind or solar energy business* shall not be allowed to participate in the IMPACT act or program pursuant to K.S.A. 74-50,102 et seq., and amendments thereto, with respect to the eligible project ~~or~~, eligible aviation project *or eligible wind or solar energy project*. The secretary may include provisions in the agreement described in subsection (e) to limit or reduce the amount of eligible credits, including but not limited to those allowed pursuant to K.S.A. 79-32,160a, 79-32,182b or 79-32,206, and amendments thereto, on the investment of the proceeds of the bonds issued under this act. Nothing in this subsection shall be construed to prohibit

the eligible business ~~or~~, eligible aviation business *or eligible wind or solar energy business* from receiving credits allowed by law for any investment not related to bonds issued pursuant to this section.

(j) All hiring and use of the employees described in subsection (c)(5)(C) by an eligible business in connection with an eligible project, or described in subsection (c)(3)(C) by an eligible aviation business in connection with an eligible aviation project *or an eligible wind or solar energy business, as described in subsection (c)(7)*, shall be subject to post audit under the legislative post audit act, and amendments thereto. All audit expenses incurred shall be charged to and paid by such eligible business or eligible aviation business. All moneys received for such audit expenses shall be deposited in the state treasury and credited to the audit services fund of the division of post audit. The division of post audit is hereby authorized to conduct the audit work authorized by this section in accordance with the provisions of the legislative post audit act, and amendments thereto.

(k) Bonds issued under this section shall not be used to provide for or to increase compensation packages, rewards, bonuses, pensions, enhanced retirement, stock options, buyouts or substantial severance pay or other financial benefits to any chief executive officer, chief financial officer or any officers of the company.

(l) The agreement described in subsection (e) shall include a provision requiring the eligible business or eligible aviation business to agree that (1) the eligible business ~~or~~, eligible aviation business *or eligible wind or solar energy business* shall be subject to post audit under the legislative post audit act, and amendments thereto, (2) the eligible business ~~or~~, eligible aviation business *or eligible wind or solar energy business* shall pay audit expenses and (3) the eligible business ~~or~~, eligible aviation business *or eligible wind or solar energy business* shall not limit access to information required under the legislative post audit act, and amendments thereto.

(m) The secretary shall report to the state finance council on any new agreements entered into between the secretary and an eligible business ~~or~~, eligible aviation business *or eligible wind or solar energy business* pursuant to this section.

(n) No new eligible project ~~or~~, eligible aviation project *or eligible wind or solar energy project* shall be approved for financing under the provisions of this section on or after July 1, 2013.

Sec. 2. K.S.A. 2008 Supp. 74-50,136 is hereby repealed.

Sec. 3. This act shall take effect and be in force from and after its publication in the Kansas register.

Approved April 6, 2009.

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