

SESSION OF 2003

**SUPPLEMENTAL NOTE ON SENATE BILL NO. 281**

As Amended by House Committee of the Whole

**Brief\***

SB 281 would enact the Economic Development Revitalization and Reinvestment Act. The bill would provide for the Kansas Development Finance Authority (KDFA) to issue bonds of up to \$500.0 million plus certain bonding expenses for a project involving research, development, engineering, or manufacturing for an eligible business engaged in manufacturing. The interest on these bonds would be paid, in whole or in part, by income tax withholding moneys collected by the eligible business from employees involved in the eligible project.

In order to be eligible for income tax withholding bonds under the bill a person, corporation, partnership, or other entity doing business in Kansas would have to meet conditions imposed by the Secretary of Commerce and Housing which could include the following criteria:

- Have an average payroll of at least \$600.0 million in the base eligibility period, which would be defined as the three taxable years immediately preceding the date of application for benefits under the act.
- Have paid an average gross compensation of at least \$50,000 per employee during the base eligibility period, which would be defined as the three taxable years immediately preceding the date of application for benefits under the act.
- Have invested at least \$1.0 billion in real and tangible personal property located and currently in use in Kansas.
- Be classified as being in the manufacturing sector using the North American Industrial Classification System (NAICS).

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\*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <http://www.kslegislature.org/klrd>

Projects which would be eligible for income tax withholding bonds would be a research, development, engineering, or manufacturing project. The project would be required to be:

- Undertaken by an eligible business relating to the development of a new or improved business component or product.
- Proposed to invest a minimum of \$500.0 million in Kansas in direct connection with the project.
- Proposed to employ up to 4,000 full-time employees in Kansas for the project.

Under the bill, an entity could apply to the Secretary of Commerce and Housing to enter into an agreement for withholding tax bonds under the act. The application must include evidence that the applicant is an eligible business and a detailed description of the eligible project.

If the Secretary of Commerce and Housing finds that the application is from an eligible business and that the project is an eligible project, the Secretary could enter into an agreement for withholding tax bonds under the act. This agreement would be subject to review and approval by the State Finance Council. The agreement would have the following components:

- The agreement would commit the Secretary to request that KDFA issue the bonds in an aggregate principal amount of not to exceed \$500.0 million plus costs of issuance, costs of credit enhancement, reserve funds, and capitalized interest.
- The agreement would commit the eligible business to pay the principal of and interest on the bonds; except that revenues collected for income tax withholding of the employees of the eligible business with respect to the eligible project, which is needed to pay the interest on the bonds, would go to pay interest on the bonds.
- The agreement would specifically provide that if the revenue from the withholding tax is insufficient to pay interest on the bonds, the eligible business would remain obligated to make the payments.

- The terms and conditions of the bonds would be set forth in the agreement or in the financing documents related to the bond issuance.
- If the eligible business terminates, cancels, or reduces the scope of the eligible project approved by the Secretary, the agreement would be required to provide that with respect to debt service, the eligible business would remain responsible for payment of the entire outstanding principal as well as any interest still outstanding and income tax withholding moneys would not be available to pay the remaining interest portion of the debt service obligation.
- The agreement would be required to contain a method for reconciling, at least annually, those income tax refunds and balances due resulting from income tax withholding with respect to the eligible project.
- The agreement would include a provision requiring the eligible business to agree to be subject to post audit and be responsible for audit expenses. The agreement would also provide that the eligible business could not limit access to information required under the Legislative Post Audit Act.

This bill would authorize the KDFA to issue bonds to finance the eligible project. Under the bill, the maximum maturity of the bonds would be 20 years unless the Secretary of Commerce and Housing made a finding that a maturity of more than 20 years was necessary, in which case the maximum maturity of the bonds would be 30 years. The income tax withholding of the employees of the eligible business with respect to the eligible project could only go to pay interest on the bonds for up to 20 years from the issuance of the bonds. Interest paid on bonds issued would not be subject to the Kansas income tax.

The bill would create the Special Economic Revitalization Fund and direct the State Treasurer to credit to it income tax withholding revenues collected by the eligible business with respect to the eligible project.

The bill also would describe the process for distributing the moneys from the Special Economic Revitalization Fund to the KDFA and would clarify that distributions from the fund would not be subject

to appropriation. The bill also would clarify that the interest generated by the Special Economic Revitalization Fund would remain in that fund.

Under the bill, the eligible business would not be allowed to participate in the IMPACT program with respect to the eligible project. The bill goes on to provide that the Secretary of Commerce and Housing could include provisions in the agreement to limit or reduce the amount of eligible income tax credits, including job expansion and investment tax credits, research and development tax credits, and business machinery and equipment tax credits. However, the bill would not prohibit the eligible business from receiving tax credits for investments which are unrelated to the bonds.

The bill would prohibit the use of bond proceeds to increase financial benefits for the chief executive officer, chief financial officer, or any officers of the eligible business.

The bill would impose a sunset of July 1, 2005, after which time no new eligible project could be approved for income tax withholding bonds.

The bill would require Kansas, Inc. to include an analysis of the incentive provided by the bill in that agency's annual report on the cost effectiveness of economic development tax exemptions and credits. The bill also would reduce the number of questionnaires sent out relative to the Kansas, Inc. report such that only those taxpayers utilizing the tax incentives described in the report would receive a questionnaire.

The bill would make the hiring and use of employees from whom the income tax withholding is collected subject to post audit under the Legislative Post Audit Act. All audit expenses incurred would be paid by the eligible business.

The bill would be effective upon publication in the *Kansas Register*.

## **Background**

The Senate Committee held a hearing on the bill, at which time representatives of the Wichita Area Chamber of Commerce, The Boeing Company, and the AFL-CIO testified in favor of the bill. Written

testimony was also offered from the Center for Economic Development and Business Research at Wichita State University.

The Senate Committee amended the bill to:

- State that the income tax withholding moneys would only be diverted to pay interest on the bonds for up to 20 years.
- Require Kansas, Inc. to include an analysis of the incentive provided by the bill in that agency's annual report on the cost effectiveness of economic development tax exemptions and credits.
- Include the paying agent for the bonds in the agreement designating the distribution dates for Economic Revitalization Fund moneys.
- Make technical amendments.

The Senate amended the bill to:

- Alter the definition of "eligible business" such that the Secretary of Commerce and Housing would impose conditions to be met in order to qualify as an eligible business instead of establishing criteria in the bill. The definition of eligible business would retain a number of criteria which could be used by the Secretary of Commerce and Housing.
- Remove from the list of criteria which could be used by the Secretary of Commerce and Housing to establish eligibility the specific reference to aircraft manufacturing which could allow other manufacturing business to use income tax withholding bonds.
- Change the criteria for an eligible project to include an investment of a minimum of \$500.0 million in Kansas instead of expenditures in Kansas.
- Change the requirement for the amount of employees involved in the eligible project from hiring a minimum of 4,000 full-time employees to employing up to 4,000 full-time employees.

- Add a provision making the agreement subject to review and approval by the State Finance Council.
- Clarify that the agreement would be required to provide that with respect to debt service, the eligible business would remain responsible for payment of the entire outstanding principal as well as any interest still outstanding and income tax withholding monies would not be available to pay the remaining interest portion of the debt service obligation.
- Require that the agreement include a provision requiring the eligible business to agree to be subject to post audit and be responsible for audit expenses. The agreement would also provide that the eligible business could not limit access to information required under the Legislative Post Audit Act.
- Provide that interest paid on bonds issued would be subject to the Kansas income tax.
- Add research and development tax credits, business machinery and equipment tax credits, and high performance tax incentives to the list of additional incentives which could not be used by the eligible business in addition to the income tax withholding bonds.
- Clarify that the bill would not prohibit the eligible business from receiving tax credits for investments which are unrelated to the bonds.
- Make the hiring and use of employees from whom the income tax withholding is collected subject to post audit under the Legislative Post Audit Act. All audit expenses incurred would be paid by the eligible business.

The House Committee amended the bill to:

- Make a number of technical changes suggested by the KDFA.
- Modify a provision addressing the issue of multiple tax incentives for a single project to say that the eligible business would not be allowed to participate in the IMPACT program with respect to the eligible project and that the Secretary of Commerce and Housing