SESSION OF 2007

SUPPLEMENTAL NOTE ON HOUSE BILL NO. 2496

As Amended by House Committee on Economic Development and Tourism

Brief*

HB 2496 would create the Kansas Investment Credit Act, the Kansas Jobs Credit Act and amend existing law.

Kansas Investment Credit Act

The Kansas Investment Credit Act would require a qualified company located in an opportunity zone to make an investment of at least $50,000 and a qualified company not located in an opportunity zone, to make a minimum investment of $150,000 to qualify for the 10 percent tax credit. Opportunity zones would be established by the Secretary of Commerce through rules and regulations. In addition, an opportunity zone must comprise at least one county, and would be economically disadvantaged, and would not include any counties in a metropolitan statistical area or micropolitan statistical area. In addition, a headquarters or ancillary support operation identified by the Secretary of Commerce for purposes of this Act would also qualify for the Kansas investment credit.

The business would be required to pay employees higher-than-average wages within a wage region at the Kansas business facility. In addition, the Secretary of Commerce would be required to develop each set of wage thresholds for comparison purposes; or the composition of wage regions used in connection with each set of wage thresholds. An alternative process also would be established in the bill based on 1.5 times the aggregate statewide average wage paid by industries

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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 covered by the employment security law based on data maintained by the Secretary of Labor.

For taxable years commencing after December 31, 2007, the tax credit would be allowed against the Kansas Income Tax Act, the Premium Tax, Privilege Fees, or Privilege Tax. The tax credit could be carried forward for ten years. The tax credit is available to subchapter S corporations, partnerships, and limited liability companies.

The bill would require the Secretary of Revenue and the Secretary of Commerce to work together to coordinate a set of procedures to implement the provisions of the Act and requires the business to provide information to justify claiming the credits.

The bill would require the Secretary of Revenue to submit an annual report to the Legislature regarding utilization of the credits claimed and the first report would be due with the beginning of the 2010 Legislative Session.

The bill would give rules and regulations authority to the Secretary of Revenue and the Secretary of Commerce.

In addition, any company that receives a Kansas investment credit would be exempted from receiving any credits from the Enterprise Zone Act, or the Job Expansion and Investment Tax Credit Act except if those credits were earned prior to December 31, 2007. No additional credits would be earned through the High Performance Incentive Act after December 31, 2007, except they may be carried forward for the appropriate time frame. Any taxpayer who filed an application prior to July 1, 2008, may claim credits under the High Performance Incentive Act, but not under the Kansas Investment Credit Act for 2008 and 2009 to accommodate the 2008 transition period. The Act would expire on January 1, 2013.

Kansas Job Credit Act

For taxable years after December 31, 2007, the bill would provide the following tax credits:

- Opportunity zone business: for 2 new employees a credit of $3,500 per new employee against the Kansas Income Tax Act, the Premium Tax, Privilege Fees, or the Privilege Tax provided that such new employees would be paid at least the federal minimum wage.

- Business outside of an opportunity zone: for 10 new employees within two consecutive tax years a credit of $1,500 per new employee against the Kansas Income Tax Act, the Premium Tax, Privilege Fees, or the Privilege Tax.

- The bill would require a new employee to perform the majority of the services in either an opportunity zone or in the State of Kansas.

- The credits may be carried forward until the total amount of the tax credits are used. In the event the taxpayer does not continue to employ the required minimum number of employees, any credit remaining would be forfeited. A taxpayer could only apply for either an opportunity zone or a Kansas Job Credit; but not both for the same employee.

- The credits would apply to subchapter S corporations, partnerships, or limited liability companies.

The bill would require the taxpayer to provide documentation as a condition for claiming the credits. The Secretary of Revenue would be required to submit an annual report to the Legislature regarding utilization of the credits beginning with the 2010 Legislative Session.

The bill would allow the Secretary of Revenue to adopt rules and regulations for administering this Act. The Act would expire on January 1, 2013.

Amendments to Current Law

The following amendments would be made to current law:

- The bill would provide that credits allowed under the Kansas Investment Credit Act and the Kansas Jobs Credit Act would be treated as tax paid for insurance companies, and deletes references to High Performance Incentive Program and qualified business credits.

- The Kansas Investment Credit Act would not be allowed for any amount of investment related to or computed on the basis of any investment of the proceeds of obligations issued under the Kansas Development Finance Authority Act.

- The bill would provide a sales tax exemption on the construction, reconstruction, enlargement, or remodel of a facility for a taxpayer that qualifies for a Kansas jobs or opportunity zone credit. The bill also would provide for a fraction of the sales tax exemption when the qualified taxpayer only leases or uses only part of the facility.

- The bill would repeal the following statutes: Kansas Enterprise Zone Act, High Performance Investment Program, Business and Job Development Credit Act, and the tax credit provided for Professional Employer Associations as they would be eligible for the new investment and jobs credit programs.

- The bill would amend the High Performance Investment Training and Education statute by eliminating all qualifiers for the credit except that any business would be required to provide a cash investment in the training and education of the firm's employees that exceeds 2 percent of the firm's total payroll cost. The maximum amount of the credit would not exceed $50,000 in any single tax year. The business would be required to report on the company tax return the total employment and payroll at the end of the tax year in which the credit were claimed.

Background

Proponents for the bill were representatives of the Kansas Chamber of Commerce, National Federation of Independent Business, Kansas Livestock Association, Topeka Chamber of Commerce, Lenexa Chamber of Commerce, CBIZ Accounting, Z3 Graphics, Cohen Esrey Real Estate, and Mission Electronics.

The House Committee made the following amendments to the bill:

- Kansas Investment Tax Credit
  - The threshold for opportunity zone business investment was changed from $100,000 to $50,000;
  - The threshold for a business outside of an opportunity zone or a headquarters or ancillary support operation investment was changed from $1.0 million to $150,000;
  - The High Performance Investment Training and Education Program was eliminated in the original bill; however, the Committee eliminated the requirements except for the training investment and made it available to all Kansas businesses;
  - The definition of qualified businesses was expanded by the addition of beef cattle feedlots; and
  - The effective date was moved from December 31, 2006 to December 31, 2007 and the sunset was moved from January 1, 2012 to January 1, 2013.

- The Kansas Jobs Credit Act

    - The threshold for opportunity zone businesses was changed from 5 new employees to 2 new employees and a requirement that the new employees be paid wages at least equal to the federal minimum wage was included;

    - The threshold for all business outside of the opportunity zone went from 20 new employees to 10 new employees within two consecutive tax years;

    - The threshold for headquarters and ancillary support operations remained at 20 new employees;

    - The definition of qualified businesses was expanded by the addition of beef cattle feedlots; and

    - The effective date was changed from December 31, 2006 to December 31, 2007, and the sunset was moved from January 1, 2012 to January 1, 2013.

The Department of Revenue indicates that the original HB 2496, concerning the credits themselves, would not have a fiscal effect on state revenues, because the fiscal effect of eliminating the current incentive programs would be offset by the addition of these new incentive programs. However, the Department indicates the bill would require $53,320 for the salary of 1.0 FTE Customer Representative Specialist to handle the anticipated increase in the number of phone calls and inquiries from taxpayers on the new tax incentive programs. The bill would require modifications to the automated tax system. The required programming for this bill by itself would be performed by existing staff of the Department of Revenue. However, if the combined effect of implementing this bill and other enacted legislation exceeds the Department's programming resources, or if the time for implementing the changes is too short, expenditures for outside contract programmer services beyond the Department's current budget may be required. Any fiscal effect associated with HB 2496 is not reflected in *The FY 2008 Governor's Budget Report.*

The Department of Commerce indicates that the bill would require it to perform additional administrative responsibilities that require oversight, compliance, reporting, and audit activities. The Department indicates that it would require an additional $300,000 to cover the salaries an benefits of 3.0 new FTE positions and the expenses to operate field offices across the state to implement the Opportunity Zone Incentives. These expenditures are included in the Department's new Rural Opportunity Program in *The FY 2008 Governor's Budget Report.*