

2023 Kansas Statutes

74-50,312. Establishment and purpose; eligibility requirements; benefits; agreement with secretary of commerce; conditions and requirements of agreement; limitation on agreements; approval by state finance council; benefit retention requirements; rule and regulation authority.

(a) There is hereby established the attracting powerful economic expansion program to be administered by the secretary of commerce. The purpose of the attracting powerful economic expansion program is to attract large capital investments by businesses engaged in specified industries in new business facilities and operations in Kansas, or large capital investments in new national headquarters in Kansas by any business, and to encourage the development of a Kansas-based supply chain for such large enterprises.

(b) A qualified firm that makes a qualified business facility investment of at least \$1,000,000,000 in a qualified business facility pursuant to the requirements of this act may be eligible for the following incentives as approved by the secretary:

- (1) The investment tax credit pursuant to K.S.A. 2023 Supp. 74-50,313, and amendments thereto;
- (2) reimbursement of a percentage of total payroll, pursuant to K.S.A. 2023 Supp. 74-50,315 and 74-50,316, and amendments thereto;
- (3) reimbursement of a percentage of eligible employee training and education expense pursuant to K.S.A. 2023 Supp. 74-50,317 and 74-50,318, and amendments thereto;
- (4) a sales tax exemption for construction costs of the qualified business facility pursuant to K.S.A. 79-3606, and amendments thereto, and K.S.A. 2023 Supp. 74-50,319, and amendments thereto; and
- (5) reimbursement of a percentage of relocation expenses and incentives for relocation of employees to Kansas pursuant to K.S.A. 2023 Supp. 74-50,322 and 74-50,323, and amendments thereto.

(c) To be eligible to receive an incentive listed in subsection (b), a qualified firm shall meet the requirements of this act, including any requirements or provisions specific to each such incentive, and any rules and regulations of the secretary pursuant to this act and shall:

- (1) Submit an application to the secretary in the form and manner prescribed by the secretary and including all information as required by the secretary;
- (2) if requested by the secretary, prior to making a commitment to invest in a qualified business facility, submit a certificate of intent to invest in the qualified business facility to the secretary in the form and manner required by the secretary, including, if requested by the secretary, a date investment will commence;
- (3) commit to a qualified business investment of at least \$1,000,000,000 in the qualified business facility to be completed within five years of the commitment to invest on such date specified in the agreement pursuant to paragraph (5);
- (4) complete the project and commence commercial operations within five years of either the commitment to invest or the date of the agreement with the secretary made pursuant to this section, as designated by the secretary and on such date as specified in the agreement pursuant to paragraph (5);
- (5) if the application is approved by the secretary, enter into a binding agreement with the secretary with such terms and conditions as required by the secretary and including the commitments required by this act. The agreement shall be entered into before any benefits may be provided under this act. The agreement shall be subject to the approval of the state finance council as provided in subsection (e). The secretary shall not enter into an agreement with more than one qualified firm in calendar year 2022 and shall not enter into an agreement with more than one qualified firm in calendar year 2023. The secretary shall not enter into an agreement with any qualified firm after December 31, 2023;
- (6) obtain and submit a bond to the secretary if required as follows: The secretary shall determine a minimum investment grade rating requirement for each project of a qualified firm seeking benefits under this act. In determining the minimum investment grade rating, the secretary shall consider the aspects of the qualified firm and the qualified business facility or project and shall consult ratings from three

nationally recognized rating agencies selected by the secretary that provide investment grade ratings. A qualifying firm or qualifying business facility that does not meet the minimum investment grade rating determined by the secretary shall obtain and submit a bond in an amount, as determined by the secretary, of the costs associated with the primary construction of the building or buildings of the qualified business facility to a degree of completion specified by the secretary. The bond shall be paid to the state if, in the judgment of the secretary, the qualified business facility has not been constructed to the degree specified; and

(7) commit to repayment of any benefit or benefits received, connected to or associated with a term or a condition of the agreement that has been breached as determined by the secretary and to the forfeiture of any such earned benefits and the suspension or cessation of such future benefits for as long as the breach is not corrected. The secretary shall report any material breach of the terms and conditions of the agreement to the state finance council within 14 calendar days of the secretary first becoming aware of such breach.

(d) A qualified supplier, that meets the requirements of paragraphs (1) and (2), as determined by the secretary, may be eligible for the incentives listed in subsection (b) (1), (3) or (4) or a partial retention of payroll withholding taxes for employees as provided by K.S.A. 2023 Supp. 74-50,314, and amendments thereto, upon designation by a qualified firm as eligible for incentives pursuant to paragraph (1). No benefits under K.S.A. 2023 Supp. 74-50,314 or 74-50,317, and amendments thereto, shall be awarded to the qualified supplier until the commencement of such qualified firm's operations at the qualified business facility, as determined by the secretary. If the qualified business facility fails to commence operations as required by subsection (c) (4), all incentives that may have been awarded to the qualified supplier under this act shall be forfeited and the qualified supplier shall cease to be eligible for further benefits until the requirements of this act are met with respect to the same qualified firm that has entered into a new agreement with the secretary or a different qualified firm. To be eligible to receive benefits, a qualified supplier shall meet the requirements of this act, including any requirements or provisions specific to each such incentive, and any rules and regulations of the secretary pursuant to this act and shall:

(1) Be selected by the qualified firm as a qualified supplier eligible to receive incentives under this act and identified to the secretary of commerce. Not more than five qualified suppliers may be selected by any one qualified firm. Such selection shall not be changed unless a qualified supplier selected by the qualified firm breaches the terms of an agreement under this act and is disqualified by the secretary. In such case, the qualified firm may select a replacement qualified supplier;

(2) within each period of one year for which incentives may be earned, beginning with the year in which the qualified supplier was designated as eligible for benefits by the qualified firm, have made sales, as defined by the secretary, of more than \$10,000,000 to the qualified business facility. This requirement may be waived by the secretary upon a showing of exceptional circumstances;

(3) submit an application to the secretary, in the form and manner as designated by the secretary, and provide all information requested by the secretary, including, but not limited to, evidence establishing sales of more than \$10,000,000 to the qualified firm for the qualified business facility as required by paragraph (2). The qualified firm shall submit evidence to the secretary as requested regarding the date operations at the qualified business facility commenced and the sales to the qualified business facility by the qualified supplier;

(4) if the application is approved by the secretary, enter into a binding agreement with the secretary with such terms and conditions as required by the secretary and the commitments required by this act, including, but not limited to, providing the secretary with evidence showing the amount of sales to the qualified firm for each year that an incentive is claimed. The agreement shall be entered into before any benefits may be provided under this act. The agreement shall be subject to the approval of the state finance council, as provided in subsection (e); and

(5) commit to repayment of the amount of all benefits received under this act in the event the qualified supplier breaches the terms and conditions of the agreement entered into pursuant to paragraph (4).

(e) Any agreement with a qualified firm or qualified supplier pursuant to this section shall not be effective unless reviewed and approved by the affirmative vote of the governor and by a majority vote of the legislative members of the state finance council prior to the finalization of the agreement by the secretary. If the state finance council does not approve the agreement, the secretary shall not enter into the agreement, but may negotiate further with the firm and submit another proposed agreement for review and approval by the council, until an agreement approved by the council is finally executed or the secretary or the firm discontinues negotiations. The state finance council shall also affirmatively approve, prior to the finalization of an agreement by the secretary, any increase of the total payroll benefit percentage, provided pursuant to K.S.A. 2023 Supp. 74-50,315, and amendments thereto, to be allowed a qualified firm above 7.5%, or such percentage greater than 7.5% shall not be effective. Prior to the finalization of an agreement by the secretary, the state finance council shall also affirmatively approve any additional portions or installments of the investment tax credit as provided by K.S.A. 2023 Supp. 74-50,315(h), and amendments thereto, otherwise such increase in the portions or installments shall not be effective. This matter is hereby characterized as a matter of legislative delegation and subject to the guidelines prescribed in K.S.A. 75-3711c, and amendments thereto, except that the state finance council is expressly granted the authority to act on this matter at any time, including when the legislature is in session. The secretary of commerce or any officer or employee of the department of commerce shall appear before the state finance council to provide testimony if requested by the state finance council. Notwithstanding the provisions of the Kansas open meetings act, any review, testimony or discussion of a proposed agreement shall not be open to the public. A vote on approval of an agreement shall be made in open session. However, the details of a proposed agreement need not be disclosed publicly. With respect to the state finance council, the proposed agreement, and any associated documentation or testimony pertaining to the proposed agreement, shall be confidential and shall not be subject to the Kansas open records act. The fact that a proposed agreement or its terms or associated documents or testimony has been referenced or reviewed by the state finance council shall not make the agreement or associated documents or testimony subject to the Kansas open records act with respect to any other agency. The provisions of this paragraph providing for confidentiality of records shall expire on July 1, 2027, unless the legislature acts to reenact such provisions pursuant to K.S.A. 45-229, and amendments thereto.

(f) A qualified firm or qualified supplier that is approved by the secretary for incentives under this act shall not be eligible for participation in any other economic development program or fund administered by the secretary of commerce, including, but not limited to, the STAR bond program, the promoting employment across Kansas program, the high performance incentive program or the Kansas industrial training or Kansas industrial retraining programs.

(g) As a condition of receiving an incentive under this act, a qualified firm or qualified supplier shall agree to cooperate with any audit undertaken by the secretary of revenue as provided by subsection (i) and to provide the secretary of commerce:

- (1) Information required for publication in the economic development incentive program information database pursuant to K.S.A. 2023 Supp. 74-50,226, and amendments thereto;
- (2) information reasonably required for the secretary's report pursuant to K.S.A. 2023 Supp. 74-50,320, and amendments thereto;
- (3) information required by the secretary of commerce or the secretary of revenue pursuant to subsections (h) and (i); and
- (4) reasonable access by the secretary or the secretary's agents to the qualified business facility during business hours.

(h) (1) The secretary shall conduct an annual review of the activities undertaken by a qualified firm or qualified supplier to ensure that the qualified firm or qualified supplier remains in good standing with the state and in compliance with the provisions of this act, any rules and regulations adopted by the secretary with respect to this act and any agreement entered into pursuant to this act and continues to meet the requirements for the benefits provided under this act. The secretary of commerce shall certify annually to the secretary of revenue that the qualified firm or qualified

supplier meets the criteria for designation as a qualified firm or qualified supplier and is eligible for such benefits. The secretary of commerce may obtain any and all information reasonably necessary to determine such eligibility. Such information shall be confidential to the same extent as information provided to the secretary to determine eligibility pursuant to K.S.A. 74-50,131, and amendments thereto.

(2) Confidential financial information, any trade secret or other information that, if known, would place the qualified firm at a disadvantage in the marketplace or would significantly interfere with the purposes of this act in the judgment of the secretary that is obtained under this section shall not be subject to disclosure pursuant to K.S.A. 45-215 et seq., and amendments thereto, but shall upon request be made available to the legislative post audit division. The provisions of this paragraph shall expire on July 1, 2027, unless the legislature reviews and reenacts such provisions pursuant to K.S.A. 45-229, and amendments thereto.

(i) The books and records concerning investments made, sales, employment and wages of any employees for which the qualified firm, qualified supplier or third party has retained any Kansas payroll withholding taxes or any other financial, employee or other records that pertain to eligibility for benefits or compliance with the requirements of this act shall be available for inspection by the secretary or the secretary's duly authorized agents or employees during business hours on at least 10 days' prior written notice. The secretary may request the department of revenue to audit the qualified firm or qualified supplier, or a third party if applicable, for compliance with the provisions of this act.

(j) The secretary of revenue, in consultation with the secretary of commerce, shall develop a form that shall be completed annually by any qualified firm or qualified supplier that received any tax benefit pursuant to this section and K.S.A. 2023 Supp. 74-50,313 or 74-50,314, and amendments thereto. Such form shall request, at a minimum, the information required by K.S.A. 79-32,243(a)(1) through (a)(6), and amendments thereto, and such other information as shall reasonably be required by the secretary of revenue and the secretary of commerce. The contents of the completed form shall be confidential except as provided in K.S.A. 79-3234, and amendments thereto.

(k) (1) In addition to the provisions of subsection (c)(7) and any other repayment requirement pursuant to this act, as a condition of receiving benefits under this act, a qualified firm that relocates its qualified business facility operations outside this state in the 10th through the 15th year next following the year the qualified firm entered into the agreement with the secretary pursuant to subsection (c)(5), shall be subject to a benefit repayment requirement to the state in the amount of:

- (A) 100% of all benefits received if the relocation occurs in the 11th year;
- (B) 80% of all benefits received if the relocation occurs in the 12th year;
- (C) 60% of all benefits received if the relocation occurs in the 13th year;
- (D) 40% of all benefits received if the relocation occurs in the 14th year; and
- (E) 20% of all benefits received if the relocation occurs in the 15th year.

(2) The amount due to the state shall be paid pursuant to a repayment schedule and with interest as determined by the secretary and set forth in the agreement pursuant to subsection (c)(5), but in no event shall be paid in more than 10 years.

(3) The benefit repayment requirement shall be waived if the qualified firm sells the qualified business facility to another business and the operations of the qualified business facility are substantially continued in this state by such business, as determined by the secretary of commerce.

(l) The secretary of commerce or the secretary of revenue may adopt rules and regulations for the implementation of this act.

History: L. 2022, ch. 3, § 2; February 10.