Landon State Office Building
900 S.W. Jackson, Room 504
Topeka, KS 66612

Steven J. Anderson, CPA, MBA, Director

AD ASTRA PER ASPERA
Kansas
Division of the Budget

phone: 785-296-2436
fax: 785-296-0231
steve.anderson@budget.ks.gov

Sam Brownback, Governor

February 18, 2011

The Honorable Richard Carlson, Chairperson
House Committee on Taxation
Statehouse, Room 274-W
Topeka, Kansas 66612

Dear Representative Carlson:

SUBJECT: Fiscal Note for HB 2317 by House Committee on Taxation

In accordance with KSA 75-3715a, the following fiscal note concerning HB 2317 is respectfully submitted to your committee.

HB 2317 would create the Job Creation Program Fund at the Department of Commerce. Expenditures from the fund would be for the purpose of promoting job creation and economic development by funding projects related to a major expansion of an existing Kansas commercial enterprise; potential location in Kansas of the operations of major employer; award of a significant federal or private sector grant which has a financial matching requirement; potential departure from Kansas or the substantial reduction of the operations of a major Kansas employer; training or retraining activities for employees in Kansas companies; potential closure or substantial reduction of the operations of a major state or federal institution; projects in counties with at least a 10.0 percent population decline during the period from 2000 to 2010; or other unique economic development opportunities. The Department of Commerce would be required to produce an annual report on the expenditures and job creation performance of the Job Creation Program Fund.

The bill would make a number of changes to existing tax credits and economic development programs and would transfer any savings realized from the elimination, modification, or limitation of these programs to the newly created Job Creation Program Fund. The Secretary of Revenue would be required to determine the amount of savings on July 1, 2011 and each year thereafter, and transfer that amount to the Job Creation Program Fund. The changes to existing tax credit and economic development programs would be as follows:

1. Repeal the Business and Job Development Tax Credit beginning in tax year 2012;

2. Raise the minimum investment threshold for the High Performance Incentive Program (HPIP) Tax Credit to $5.0 million, provide the 10.0 percent tax credit only for the amount of investment exceeding $5.0 million beginning in tax year 2012, and the sales tax exemption for HPIP qualified projects would expire on January 1, 2017 to coincide with the elimination of the HPIP Tax Credit that would occur in tax year 2017;

3. Repeal the Business Machinery and Equipment Tax Credit beginning in tax year 2012;

4. Repeal the Enterprise Zone sales tax exemption for qualifying purchases related to the Business and Job Development Tax Credit beginning on January 1, 2012;

5. Repeal the Kansas Economic Opportunity Initiatives Fund (KEOIF) Program of the Department of Commerce effective January 1, 2012; and

6. Amend the Kansas Investments in Major Investments in Major Projects and Comprehensive Training (IMPACT) Act to no longer allow bonds to be issued to finance this program as of December 31, 2011, and would transfer the amount of the 2.0 percent of all Kansas employee withholding taxes that is not currently necessary for debt service on existing bonds or program administration to the Job Creation Program Fund.

The bill would also allow taxpayers beginning in tax year 2012 to elect to take an expense deduction for Kansas tax purposes for the cost of certain tangible property placed in service during the taxable year. If an election is made, the amount of the expense deduction would be equal to the difference between the depreciable amount for federal purposes and the amount of bonus depreciation that is currently allowed under federal law. If the amount of expense deduction exceeds the taxpayer's taxable income, the excess may be carried forward until the total amount is used. If the property is sold and would cause recapture under federal rule, then the expense deduction would be subject to recapture and treated as Kansas taxable income.

The bill would allow any member of a unitary group to elect to take an expense deduction for an investment made by any member of the group, provided that the amount calculated may only be deducted from the Kansas taxable allocated to Kansas by such member making the election. The bill would not allow a taxpayer that elects to expense any investment to be eligible for any tax credit, accelerated depreciation, or deduction for such investment. The amount of saving from not allowing the taxpayer to claim both expensing and any other tax credit, accelerated depreciation, or deduction for such investment would be calculated by the Secretary of Revenue on July 1, 2011, and each year thereafter and transferred to the Job Creation Program Fund.

HB 2317 would decrease revenue to the State General Fund by an estimated $23.2 million in FY 2012 by allowing the Job Creation Program Fund of the Department of Commerce to receive the amount of the 2.0 percent of all Kansas employee withholding taxes that will not be used to pay for debt service on existing IMPACT bonds or program administration. Under current law, the amount of the 2.0 percent of Kansas employee withholding taxes that is not used to pay debt service on existing IMPACT bonds or program administration is retained by the State General Fund. The Department of Revenue estimates that it will receive $2,290.0 million from Kansas employee withholdings in FY 2012 which would allow 2.0 percent or $45.8 million to be transferred to the Department of Commerce. The Department of Commerce is already estimated to use $22.6 million in FY 2012 for debt service on IMPACT bonds, which would allow the remaining $23.2 million to be transferred to the Job Creation Program Fund in FY 2012. For FY 2013, it is estimated that approximately $25.0 million would be transferred to the Job Creation Program Fund from the amount remaining after payments are made for debt service on existing IMPACT bonds and program administration.

The bill would make changes to existing tax credits and economic development programs and would transfer any savings realized from the elimination, modification, or limitation of these programs to the Job Creation Program Fund. The estimated savings that would be captured and transferred to the Job Creation Program Fund in FY 2012 and FY 2013 would be as follows:

	FY 2012	FY 2013
Repeal Business & Job Development Credit	$ --	$5,000,000
Limits on HPIP Tax Credit	--	6,800,000
Repeal Business Machinery & Equipment Credit	--	37,000,000
Repeal Enterprise Zone Sales Tax Exemption	10,000,000	49,500,000
Repeal KEOIF	1,250,000	1,250,000
Changes to IMPACT Program	23,200,000	25,000,000
Expensing Proposal at 5.0% Discount Rate	(6,000,000)	(47,400,000)
	$28,450,000	$77,150,000

The Department of Revenue indicates that the bill would require administrative costs to implement the changes to the various income tax credits and new expensing deduction option and to modify the automated tax system. However, at the time this fiscal note was prepared, the Department was unable to estimate the administrative costs associated with this bill. If the Department determines that the costs associated with implementing this bill cannot be absorbed within existing resources, a revised fiscal note will be prepared.

The Department of Commerce currently operates the IMPACT Program and would be responsible for administering the Job Creation Program Fund that is proposed in HB 2317. The Department indicates that the proposed changes and new responsibilities could be implemented within the agency's existing resources and staff levels. The Department indicates that the bill would provide a deal closing fund which would allow greater flexibility in its business recruitment efforts and would allow the agency to avoid bond issuance fees and interest payments on bonds issued for IMPACT projects. Any fiscal effect associated with HB 2317 is not reflected in *The FY 2012 Governor's Budget Report*.

Sincerely,

Steven J. Anderson, CPA, MBA
Director of the Budget

cc: Steve Neske, Revenue
Traci Herrick, Commerce