

Substitute for HOUSE BILL No. 2220

By Committee on Taxation

3-7

1 AN ACT concerning the promoting employment across Kansas act;
2 pertaining to qualifications for benefits under the act; income tax
3 credits; amending K.S.A. 2010 Supp. 74-50,210, 74-50,211, 74-
4 50,212 and 74-50,213 and repealing the existing sections.
5

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

7 Section 1. K.S.A. 2010 Supp. 74-50,210 is hereby amended to read
8 as follows: 74-50,210. (a) The provisions of K.S.A. 2010 Supp. 74-
9 50,210 through ~~74-50,216~~ 74-50,219, and amendments thereto, shall be
10 known and may be cited as the promoting employment across Kansas act.

11 (b) It shall be the intent of this act to foster economic development
12 and the creation of new jobs and opportunities for the citizens of Kansas
13 and to incentivize the location of business facilities, other operations and
14 jobs in Kansas. The primary objective of this legislation is economic
15 development for Kansas.

16 Sec. 2. K.S.A. 2010 Supp. 74-50,211 is hereby amended to read as
17 follows: 74-50,211. As used in this act, unless the context otherwise
18 requires:

19 (a) "Act" means the provisions of K.S.A. 2010 Supp. 74-50,210
20 through ~~74-50,216~~ 74-50,219, and amendments thereto.

21 (b) "County median wage" means the median wage paid to
22 employees located in the county where the qualified company intends to
23 employ new employees as reported by the department of labor in its
24 annual report for the previous year.

25 (c) "Department" means the department of commerce.

26 (d) "Expanding business" means the expansion of an existing
27 business facility, office, department or other operation located in the state
28 of Kansas and locating in Kansas the jobs directly related to such
29 business facility, office, department or other operation.

30 (e) "High-impact project" means a business development project for
31 which the qualified company shall meet the requirements of subsection
32 (c) of K.S.A. 2010 Supp. 74-50,212, and amendments thereto.

33 (f) "Metropolitan county" means the county of Douglas, Johnson,
34 Leavenworth, Sedgwick, Shawnee or Wyandotte.

35 (g) "NAICS" means the North American industry classification

1 system.

2 (h) "NAICS code industry average wage" means the average wage
3 paid to employees of companies classified in the same NAICS code as
4 the qualified company for the region in which the qualified company
5 intends to employ new employees as reported by the department of labor
6 in its annual report for the previous year.

7 (i) "New business" means a facility, plant, division, office,
8 department, production line, production shift or other business operations
9 of a company that was not doing business in Kansas prior to the
10 submission of an application for benefits under this act and that provides
11 documentation of such to the satisfaction of the secretary.

12 (j) "New employee" means a person newly employed by the
13 qualified company in the qualified company's business operating in
14 Kansas during the taxable year for which benefits are sought under
15 K.S.A. 2010 Supp. 74-50,212, and amendments thereto. A person shall be
16 deemed to be so engaged if such person performs duties in Kansas in
17 connection with the operation of the Kansas business on: (1) A regular,
18 full-time basis; or (2) a part-time basis, provided such person is
19 customarily performing such duties at least 20 hours per week throughout
20 the taxable year. Employees performing functions directly related to a
21 relocating, expanding, or new business facility, office, department or
22 other operation shall be considered new employees.

23 (k) "Non-metropolitan county" means any county that is not a
24 metropolitan county.

25 (l) (1) (A) "Qualified company" means any for-profit corporation,
26 partnership or other entity making available to its full-time employees
27 adequate health insurance coverage and paying at least 50% of the
28 premium for such health insurance, which meets the requirements of
29 K.S.A. 2010 Supp. 74-50,212, and amendments thereto, and submits an
30 application for benefits meeting requirements established by the
31 secretary.

32 (B) *"Qualified company" also includes any not-for-profit*
33 *corporation which locates within the state of Kansas a regional, national*
34 *or international headquarters and which meets the requirements of*
35 *subparagraph (A).*

36 (2) "Qualified company" shall not include any corporation,
37 partnership or other entity: (A) Which is identified by any of the
38 following NAICS code groups, sectors or subsectors:

39 (i) Industry group 7132 or 8131;

40 (ii) sectors 44, 45, 61, 92 or 221 (including water and sewer
41 services); or

42 (iii) subsector 722;

43 (B) which is a bioscience company, as defined in K.S.A. 2010 Supp.

1 74-99b33, and amendments thereto;

2 (C) which is delinquent in the payment of any nonprotested taxes or
3 any other amounts due to the federal government, the state of Kansas or
4 any other political taxing subdivision; or

5 (D) which has filed for or has publicly announced its intention to file
6 for bankruptcy protection.

7 (3) Notwithstanding any provision of this subsection, except for
8 paragraphs (2)(B), (C) and (D), a company may be deemed a qualified
9 company if such company's headquarters or administrative offices located
10 in this state serve an international or multi-state territory and such
11 company meets the requirements of K.S.A. 2010 Supp. 74-50,212, and
12 amendments thereto.

13 (m) *"Retained job" means an existing job which will be lost without*
14 *participation by the employer under the provisions of the promoting*
15 *employment across Kansas act.*

16 (n) "Secretary" means the secretary of the department of commerce.

17 (o) *"Small business" means a qualified company located in Kansas*
18 *that has fewer than 100 employees.*

19 Sec. 3. K.S.A. 2010 Supp. 74-50,212 is hereby amended to read as
20 follows: 74-50,212. (a) In order to qualify for benefits under this act a
21 qualified company shall:

22 (1) Relocate to Kansas an existing business facility, office,
23 department or other operation doing business outside the state of Kansas
24 and locate the jobs directly related to such relocated business facility,
25 office, department or other operation in Kansas; or

26 (2) locate a new business facility, office, department or other
27 operation in Kansas and locate the jobs directly related to such business
28 facility, office, department or other operation in Kansas; or

29 (3) expand ~~a~~ *an existing* business facility, office, department or other
30 operation located in the state of Kansas and locate the jobs directly
31 related to such business facility, office, department or other operation in
32 Kansas, ~~except that no payroll withholding taxes shall be retained prior to~~
33 ~~January 1, 2012.~~

34 A qualified company may *utilize or contract with an unrelated* a third-
35 party *employer* to perform services whereby the third-party *employer*
36 serves as the legal employer of the new employees providing services to
37 the qualified company and such services are performed in Kansas and the
38 third-party *employer* and the new employees are subject to *the Kansas*
39 *state withholding and declaration of estimated tax act.*

40 (b) Any qualified company, approved by the secretary for benefits
41 pursuant to paragraph (a), that locates its business operation in a
42 metropolitan county and will hire at least 10 new employees within two
43 years from the date the qualified company enters into an agreement with

1 the secretary pursuant to K.S.A. 2010 Supp. 74-50,213, and amendments
2 thereto, or any qualified company, approved by the secretary for benefits
3 pursuant to paragraph (a), that locates its business operation in a non-
4 metropolitan county and will hire at least five new employees within two
5 years from the date the qualified company enters into an agreement with
6 the secretary pursuant to K.S.A. 2010 Supp. 74-50,213, and amendments
7 thereto, shall: (1) Be eligible to retain 95% of the qualified company's
8 Kansas payroll withholding taxes for ~~such all new employees being paid~~
9 ~~the county median wage or higher~~ for a period of up to:

10 (A) Five years if the median *or average* wage paid to the new
11 employees is equal to at least 100% of the county median wage;

12 (B) six years if the median *or average* wage paid to the new
13 employees is equal to at least 110% of the county median wage;

14 (C) seven years if the median *or average* wage paid to the new
15 employees is equal to at least 120% of the county median wage; or

16 (2) be eligible to retain 95% of the qualified company's Kansas
17 payroll withholding taxes for ~~such all new employees being paid the~~
18 ~~county median wage or higher~~ for a period of up to five years if the
19 median *or average* wage paid to the new employees is equal to at least
20 100% of the NAICS code industry average wage.

21 (c) Any qualified company, approved by the secretary for benefits
22 pursuant to paragraph (a), that engages in a high-impact project whereby
23 the qualified company will hire at least 100 new employees within two
24 years from the date the qualified company enters into an agreement with
25 the secretary pursuant to K.S.A. 2010 Supp. 74-50,213, and amendments
26 thereto, shall be eligible to retain 95% of the qualified company's Kansas
27 payroll withholding taxes for ~~such all new employees being paid the~~
28 ~~county median wage or higher~~ for a period of up to:

29 (1) Seven years if the median *or average* wage paid to the new
30 employees is equal to at least 100% of the county median wage;

31 (2) eight years if the median *or average* wage paid to the new
32 employees is equal to at least 110% of the county median wage;

33 (3) nine years if the median *or average* wage paid to the new
34 employees is equal to at least 120% of the county median wage; or

35 (4) ten years if the median *or average* wage paid to the new
36 employees is equal to at least 140% of the county median wage.

37 (d) In the event that a qualified company contracts with a third party
38 as described in subsection (a), the third party shall remit payments equal
39 to the amount of Kansas payroll withholding taxes the qualified company
40 is eligible to retain under this section to the qualified company, and report
41 such amount to the department of revenue as required pursuant to
42 subsection (a) of K.S.A. 2010 Supp. 74-50,214, and amendments thereto.

43 (e) *Effective January 1, 2012, any company, which meets the*

1 *criteria provided pursuant to the provisions of K.S.A. 74-50,211, and*
2 *amendments thereto, that retains the employees of an existing business*
3 *unit located in Kansas and enters into an agreement with the secretary*
4 *pursuant to K.S.A. 2010 Supp. 74-50,213, and amendments thereto, shall*
5 *be eligible to retain 95% of the qualified company's Kansas payroll*
6 *withholding taxes for such employees for a period of up to five years.*

7 *(f) (1) Effective January 1, 2012, pursuant to the provisions of*
8 *subsection (e), the secretary of commerce, in the secretary's sole*
9 *determination, may provide the benefits of the promoting employment*
10 *across Kansas act for situations where it is deemed necessary by the*
11 *secretary that the state of Kansas provide incentives for a company or its*
12 *operations currently located in Kansas to remain in Kansas so as to keep*
13 *its retained jobs. The secretary shall establish and verify that a*
14 *prospective company has competitive alternatives that it is seriously*
15 *considering and that a company's relocation may be imminent.*
16 *Furthermore, the secretary shall assess:*

17 *(A) Whether the retention of the company or its operations is*
18 *important to the economic vitality of the state;*

19 *(B) the area where such company or operations is located; or*

20 *(C) whether the retention of the company or its operations is*
21 *important to a particular industry in the state due to any number of*
22 *factors including, but not limited to, the quantity, quality or wages of the*
23 *retained jobs involved.*

24 *(2) Effective January 1, 2012, the secretary may use the promoting*
25 *employment across Kansas act in conjunction with other economic*
26 *development programs to develop a retention package.*

27 *(g) A small business, which meets the criteria provided pursuant to*
28 *the provisions of K.S.A. 74-50,211, and amendments thereto, and which is*
29 *approved by the secretary for benefits shall be eligible to retain 95% of*
30 *the Kansas small business' payroll withholding taxes for a period up to*
31 *five years for each additional employee, if that employee represents an*
32 *increase in the Kansas small business' statewide employment over its*
33 *highest level of employment for the previous ten-year period. Any*
34 *reduction in employment by a Kansas small business utilizing the benefit*
35 *under this subsection shall result in a corresponding reduction of such*
36 *benefit allowed.*

37 *(h) The provisions of this act as in effect prior to the effective date of*
38 *this act shall apply to employers who have entered into agreements with*
39 *the secretary prior to July 1, 2011. The provisions of this act shall apply*
40 *to employers who enter into agreements with the secretary on and after*
41 *July 1, 2011.*

42 *Sec. 4. K.S.A. 2010 Supp. 74-50,213 is hereby amended to read as*
43 *follows: 74-50,213. (a) Any qualified company meeting the requirements*

1 of K.S.A. 2010 Supp. 74-50,212, and amendments thereto, may apply to
2 the secretary for benefits under this act. The application shall be
3 submitted on a form and in a manner prescribed by the secretary, and
4 shall include: (1) Evidence that the applicant is a qualified company; and
5 (2) evidence that the applicant meets the requirements of K.S.A. 2010
6 Supp. 74-50,212, and amendments thereto.

7 (b) The secretary may either approve or disapprove the application.
8 Any qualified company whose application is approved shall be eligible to
9 receive benefits under this act as of the date such qualified company
10 enters into an agreement with the secretary in accordance with this
11 section.

12 (c) Upon approval of an application for benefits under this act, the
13 secretary may enter into an agreement with the qualified company for
14 benefits under this act. If necessary, the secretary may also enter into an
15 agreement with any third party described in subsection (a) of K.S.A. 2010
16 Supp. 74-50,212, and amendments thereto, or such third party may be a
17 party to the agreement between the qualified company and the secretary.
18 The agreement shall commit the secretary to certify to the secretary of
19 revenue: (1) That the qualified company is eligible to receive benefits
20 under this act; (2) the number of new employees hired by the qualified
21 company; and (3) the amount of gross wages being paid to each new
22 employee.

23 (d) The agreement between the qualified company and the secretary
24 shall be entered into before any benefits may be provided under this act,
25 and shall specify that should the qualified company fail to comply with
26 the terms and conditions set forth in the agreement, or fails to comply
27 with the provisions set forth in this act, the secretary may terminate the
28 agreement, and the qualified company shall not be entitled to any further
29 benefits provided under this act and shall be required to remit to the state
30 an amount equal to the aggregate Kansas payroll withholding taxes
31 retained by the qualified company, or remitted to the qualified company
32 by a third party, pursuant to this act as of the date the agreement is
33 terminated.

34 (e) A qualified company that is already receiving benefits pursuant
35 to this act may apply to the secretary for additional benefits if the
36 qualified company meets the requirements of K.S.A. 2010 Supp. 74-
37 50,212, and amendments thereto.

38 (f) A qualified company seeking benefits shall be allowed to
39 participate in the IMPACT program pursuant to K.S.A. 74-50,102 et seq.,
40 and amendments thereto, but shall not be allowed to participate in any
41 other program in which any portion of such qualified company's Kansas
42 payroll withholding taxes have been pledged to finance indebtedness or
43 transferred to or for the benefit of such company. A qualified company

1 shall not be allowed to claim any credits under K.S.A. 79-32,153, 79-
2 32,160a or 79-32,182b, and amendments thereto, if such credits would
3 otherwise be earned for the hiring of new employees and the qualified
4 company has retained any Kansas payroll withholding taxes from wages
5 of such employees. A qualified company shall not be eligible to receive
6 benefits under K.S.A. 2010 Supp. 74-50,212, and amendments thereto,
7 and under K.S.A. 74-50,102 et seq., and amendments thereto, for the
8 same new employees.

9 ~~(g) Under no circumstances shall the total amount of benefits~~
10 ~~authorized or granted to the aggregate of all expanding businesses, as~~
11 ~~such term is defined in K.S.A. 2010 Supp. 74-50,211, and amendments~~
12 ~~thereto, under this act exceed \$4,800,000 in any fiscal year commencing~~
13 ~~on or after July 1, 2011.~~

14 ~~(h)~~ (g) The secretary shall adopt rules and regulations necessary to
15 implement and administer the provisions of this act.

16 New Sec. 5. (a) For taxable years commencing after December 31,
17 2010, there shall be allowed as a credit against the tax liability of a
18 resident individual taxpayer an amount equal to the resident individual's
19 income tax liability under the provisions of the Kansas income tax act for
20 Kansas source income received from a qualified company that is business
21 income attributable to business activities conducted at the business
22 facility, office, department or other operation relocated to Kansas when
23 the taxpayer owns such qualified company and materially participates in
24 such business activities conducted at such relocated business facility,
25 office, department or other operation of such qualified company which
26 qualified for benefits under the provisions of subsection (a)(1) of K.S.A.
27 74-50,212, and amendments thereto. A taxpayer shall be treated as
28 materially participating in such qualified company's business activities
29 conducted at such business facility, office department or other operation
30 relocated to Kansas only if the taxpayer is involved in such business
31 activities of such qualified company on a basis which is regular,
32 continuous and substantial. A taxpayer may claim the credit authorized by
33 this section during any tax year in which the qualified company owned by
34 the taxpayer qualifies for benefits under provisions of K.S.A. 74-50,212,
35 and amendments thereto.

36 (b) Business income attributable to the business activities conducted
37 at the business facility, office, department or other operation relocated to
38 Kansas of a qualified company which qualified for benefits under the
39 provisions of subsection (a)(1) of K.S.A. 74-50,212, and amendments
40 thereto, shall be determined by multiplying the business income of the
41 company apportioned to this state by a fraction, the numerator of which is
42 the property factor plus the payroll factor plus the sales factor, and the
43 denominator of which is three. For purposes of this subsection, the

1 property factor is a fraction, the numerator of which is the average value
2 of the company's real and tangible personal property owned or rented and
3 used during the tax period at such relocated facility, office, department or
4 other relocated operation in Kansas, and the denominator of which is the
5 average value of the company's real and tangible personal property
6 owned or rented and used within this state during the tax period. The
7 payroll factor is a fraction, the numerator of which is the total amount
8 paid during the tax period by the company for compensation at such
9 relocated facility, office, department or other relocated operation in
10 Kansas, and the denominator of which is the total compensation paid by
11 the company in this state during the tax period. The sales factor is a
12 fraction, the numerator of which is the total sales of the relocated facility,
13 office, department or other relocated operation in this state during the tax
14 period, and the denominator of which is the total sales of the company in
15 this state during the tax period.

16 (c) The secretary of revenue shall adopt rules and regulations
17 regarding the filing of documents that support the qualifications of the
18 taxpayer for the credit claimed pursuant to this section.

19 Sec. 6. K.S.A. 2010 Supp. 74-50,210, 74-50,211, 74-50,212 and 74-
20 50,213 are hereby repealed.

21 Sec. 7. This act shall take effect and be in force from and after its
22 publication in the statute book.

23