SESSION OF 2014

CONFERENCE COMMITTEE REPORT BRIEF SUBSTITUTE FOR HOUSE BILL NO. 2430

As Agreed to May 1, 2014

Brief*

Sub. for HB 2430 would change the Promoting Employment Across Kansas (PEAK) Program in several ways.

Under the bill, qualified companies could receive PEAK benefits for a benefit period of up to five years if the average wage paid to new employees would be equal to the county median wage. The benefit period could be extended up to six or seven years if the average wage paid to new employees would be at least 110 percent or 120 percent, respectively, of the county median wage. Under current law, qualified companies may receive benefits for periods ranging from five to seven years if the median wage paid to new employees is equal to or greater than the county median wage.

Qualified, high-impact companies, meaning companies that employ at least 100 new employees, could be eligible for benefits for seven to ten years if the average wage paid to the new employees is equal to or greater than the county median wage. Under current law, the eligibility of high-impact companies is based upon the median wage paid to new employees.

The bill would permit the PEAK Program to be used for job retention for an additional 3.5 years, extending the sunset from December 31, 2014, to June 30, 2018. The aggregate

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*Conference committee report briefs are prepared by the Legislative Research Department and do not express legislative intent. No summary is prepared when the report is an agreement to disagree. Conference committee report briefs may be accessed on the Internet at http://www.kslegislature.org/klrd amount of benefits received annually by qualified companies that retain jobs would be capped at $1.2 million during FY 2015 through FY 2018.

Qualified companies who had entered into the program prior to January 1, 2013, could request an extension for up to two years. The Secretary of Commerce would have the discretion to grant the extensions as necessary for the companies to receive the benefits intended under the original PEAK agreements.

The bill would apply caps on the aggregate amount of PEAK benefits received by qualified companies that expand or relocate operations in Kansas. In FY 2014, the cap would be $12 million. In FY 2015 the cap would be $18 million, $24 million in FY 2016, $30 million in FY 2017, $36 million in FY 2018, and $42 million in FY 2019 and subsequent fiscal years.

Incumbent legislators, as of the effective date of the bill, would be prohibited from receiving benefits under the PEAK Program while in office and for a period of three years after leaving legislative office. Under current law, legislators may not avail themselves of benefits until July 1, 2015.

Conference Committee Action

The Conference Committee agreed to Sub. for HB 2430, as amended by the Senate Committee of the Whole, with the following modifications:

- Allow PEAK benefits, for an additional 3.5 years, to be received by qualified companies that retain employees;
- Delete the requirement for the Secretary of Revenue to approve PEAK applications in addition to the approval of the Secretary of Commerce;

- Place annual caps of $1.2 million on benefits received for job retention during FY 2015 through FY 2018; and
- Revise the prohibition banning incumbent legislators from receiving benefits.

Background

The bill was introduced by the House Committee on Commerce, Labor and Economic Development. In the Committee hearing, a representative of the Legislative Division of Post Audit provided neutral testimony on the bill. Proponents of the bill included the Department of Commerce and representatives from the Wichita Chamber of Commerce, the Kansas Chamber of Commerce, the Polsinelli law firm, the Overland Park Chamber of Commerce, and the Cowley County Economic Development Department. Written testimony favoring the bill was received from the Salina Chamber of Commerce, the Greater Wichita Economic Development Coalition, the Lenexa Chamber of Commerce, the Greater Topeka Chamber of Commerce, the Shawnee Chamber of Commerce, the City of Wichita, the Kansas Economic Development Alliance, the Olathe Chamber of Commerce, and the Regional Development Association of East Central Kansas. Testimony opposing the bill was provided by a representative of FairtaxKC.

Under current law, the Secretary of Commerce may utilize the PEAK Program to retain either jobs or employees of a qualified Kansas company from January 1, 2013, through December 31, 2014. The House Committee amended the bill to eliminate the December 31, 2014, sunset on the retention portion of the PEAK Program. On January 30, 2014, the Committee recommended the bill favorably for passage as amended; however, a committee report was not delivered to the chamber.

On February 17, 2014, the Committee voted to reconsider HB 2430. The Committee further amended the bill to place an aggregate cap on the total amount of benefits that may be awarded. Under the provisions of the amended bill, beginning July 1, 2020, the total amount of benefits awarded could not exceed the amount equal to all benefits authorized for the fiscal year beginning July 1, 2019. According to testimony provided by a staff member from the Office of Revisor of Statutes, the amount of the aggregate cap would be approximately $42 million which is based upon an estimate of $6 million per year beginning in FY 2013 and ending in FY 2019.

On February 24, 2014, upon further consideration of the bill, the Committee recommended a substitute bill be introduced. The Committee amended the bill to allow the Department of Commerce to carry over any ungranted benefits that may be used in any subsequent fiscal year. Under current law the Department of Commerce may carry over any unused or unallocated benefits that may be used in any subsequent fiscal year.

During the Senate Committee hearing, representatives from the Department of Commerce, the Kansas Chamber, and numerous local chambers of commerce spoke in favor of the bill. Proponents gave examples where PEAK assisted job growth. The Commerce Department stated the bill is necessary to clarify the cap on benefits, allow for the carryover of unauthorized or granted benefits, and to extend the agreement periods, when necessary, so as to ensure qualified companies receive the benefits originally intended. There was no neutral or opponent testimony.

The Chairperson of the Senate Committee on Commerce appointed a three-member subcommittee. The Subcommittee met on March 19, 2014, and discussed possible amendments. On March 20, 2014, the full Committee adopted the recommended amendments:

- Place a cap on benefits received rather than on benefits authorized or granted. Starting in FY 2014 the cap would be $12 million, and in each subsequent fiscal year increase the amount by $6 million, until FY 2019 and subsequent fiscal years when the cap would remain static at $42 million; and

- Retain the sunset of December 31, 2014, currently in statute that is placed on PEAK agreements that allow for benefits for retention of existing employees.

Finally, the Committee added an amendment to extend the prohibition placed on incumbent legislators, as of the effective date of the bill, to receive benefits under the PEAK Program by five years, from July 1, 2015, to July 1, 2020.

The Senate Committee of the Whole amended the bill to require the Secretary of Revenue to approve applications for PEAK benefits, in addition to the approval of the Secretary of Commerce as required by law.

According to the fiscal note prepared by the Division of the Budget, the bill as introduced would have a negligible fiscal effect on State General Fund revenues. Also, allowing the use of average wages would allow more new employees' withholding taxes to be eligible for the benefits under the PEAK Program; however, the amount cannot be estimated. Additionally, the Department of Revenue is unable to estimate the fiscal effect on state revenues if existing PEAK benefit agreements are extended.

The Revenue Department estimates the bill as recommended by the Conference Committee would have an annual negative fiscal impact of $1.2 million to the State General Fund, starting FY 2016 and concluding in FY 2018.

economic development; job creation; incentive

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