

HOUSE BILL No. 2574

By Committee on Commerce, Labor and Economic Development

1-28

1 AN ACT concerning employment; relating to employment requirements
2 for certain state contracts and certain state tax benefits; amending
3 K.S.A. 2015 Supp. 12-17,166, 74-50,131, 74-50,212, 74-50,217, 79-
4 32,154 and 79-32,243 and repealing the existing sections.

5
6 *Be it enacted by the Legislature of the State of Kansas:*

7 New Section. 1. (a) As used in this section:

8 (1) "Division of purchasing" means the division of purchasing of the
9 department of administration.

10 (2) "Employee" means any individual employed by a contractor or a
11 subcontractor contracted by such contractor to perform work. "Employee"
12 shall not include an individual engaged in the practice of a technical
13 profession, as defined in K.S.A. 74-7003, and amendments thereto,
14 including architecture, landscape architecture, professional engineering,
15 professional geology or professional surveying services, or an individual
16 performing construction administration services, within the meaning of
17 K.S.A. 74-7003, and amendments thereto.

18 (3) "Kansas worker" means any individual having a residence in
19 Kansas as determined by the employment records of such individual held
20 by the individual's employer.

21 (4) "State agency" means any state office or officer, department,
22 board, commission, institution or bureau, or any agency, division or unit
23 thereof.

24 (5) "State contract" means any agreement entered into on and after
25 January 1, 2017, by a state agency for the procurement of services with an
26 annual cost to the state agency of at least \$100,000, excluding lease
27 agreements, lease-purchase agreements and agreements entered into solely
28 for the acquisition of goods or commodities by the state agency.

29 (b) Any contractor entering into a state contract, including any
30 subcontractors contracted by such contractor to perform work required by
31 such state contract, shall employ a sufficient number of Kansas workers
32 such that at least 70% of the employees assigned by such contractor to
33 perform work under the state contract shall be Kansas workers. An
34 employee shall be considered assigned to perform work under the state
35 contract if the employee performs any work that is directly related to
36 fulfilling the contractor's obligations under the state contract regardless of

1 the proportion of such work to the employee's regular employment duties.

2 (c) All state agencies shall provide a copy of any state contract to the
3 division of purchasing for verification that the contractor is in compliance
4 with this section. A contractor subject to the requirements of this section
5 shall provide any personnel information to the division of purchasing as
6 required by the secretary of administration. The division of purchasing
7 shall determine if the contractor's employees are Kansas workers and
8 verify whether the contractor is in compliance with this section. The
9 division of purchasing shall submit a report to the state agency contracting
10 with the contractor stating whether the contractor is in compliance with
11 this section.

12 (d) A determination by the division of purchasing that a contractor is
13 not in compliance with this section is subject to review pursuant to the
14 Kansas administrative procedure act upon request by the contractor. Any
15 contractor aggrieved by the final decision under the Kansas administrative
16 procedure act may seek review of such decision under the Kansas judicial
17 review act.

18 (e) An employee who performs work under a state contract and is not
19 a Kansas worker may be exempt from the requirements of this section if
20 such employee provides expertise in a field necessary to fulfillment of the
21 contractor's contractual obligations, and such expertise cannot reasonably
22 be provided by a Kansas worker. A contractor may submit an application
23 to the division of purchasing for an exemption from this section for such
24 employees classified as experts. Such application shall include the name,
25 residence, position and job description of the employee, a detailed
26 explanation as to why such employee is an expert, a detailed explanation
27 as to why such expertise cannot reasonably be provided by a Kansas
28 worker, and such other information as required by the secretary of
29 administration. The division of purchasing shall determine whether such
30 employee shall be exempt from this section and shall include such
31 determination in its report to the state agency pursuant to subsection (c).

32 (f) The secretary of administration shall adopt such rules and
33 regulations the secretary deems necessary to implement and enforce the
34 provisions of this section.

35 Sec. 2. K.S.A. 2015 Supp. 12-17,166 is hereby amended to read as
36 follows: 12-17,166. (a) One or more projects may be undertaken by a city
37 or county within an established STAR bond project district. Any city or
38 county proposing to undertake a STAR bond project, shall prepare a STAR
39 bond project plan in consultation with the planning commission of the city,
40 and in consultation with the planning commission of the county, if any, if
41 such project is located wholly outside the boundaries of the city. Any such
42 project plan may be implemented in separate development stages.

43 (b) Any city or county proposing to undertake a STAR bond project

1 within a STAR bond project district established pursuant to K.S.A. 2015
2 Supp. 12-17,165, and amendments thereto, shall prepare a feasibility
3 study. The feasibility study shall contain the following:

4 (1) Whether a STAR bond project's revenue and tax increment
5 revenue and other available revenues under K.S.A. 2015 Supp. 12-17,169,
6 and amendments thereto, are expected to exceed or be sufficient to pay for
7 the project costs;

8 (2) the effect, if any, a STAR bond project will have on any
9 outstanding special obligation bonds payable from the revenues described
10 in K.S.A. 2015 Supp. 12-17,169, and amendments thereto;

11 (3) a statement of how the jobs and taxes obtained from the STAR
12 bond project will contribute significantly to the economic development of
13 the state and region;

14 (4) visitation expectations;

15 (5) the unique quality of the project;

16 (6) economic impact study;

17 (7) market study;

18 (8) market impact study;

19 (9) integration and collaboration with other resources or businesses;

20 (10) the quality of service and experience provided, as measured
21 against national consumer standards for the specific target market;

22 (11) project accountability, measured according to best industry
23 practices;

24 (12) the expected return on state and local investment that the project
25 is anticipated to produce;

26 (13) a statement concerning whether a portion of the local sales and
27 use taxes are pledged to other uses and are unavailable as revenue for the
28 STAR bond project. If a portion of local sales and use taxes is so
29 committed, the applicant shall describe the following:

30 (A) The percentage of city and county sales and use taxes collected
31 that are so committed; and

32 (B) the date or dates on which the city and county sales and use taxes
33 pledged to other uses can be pledged for repayment of bonds; and

34 (14) an anticipated principal and interest payment schedule on the
35 bond issue.

36 The failure to include all information enumerated in this subsection in
37 the feasibility study for a STAR bond project shall not affect the validity of
38 bonds issued pursuant to this act.

39 (c) If the city or county determines the project is feasible, the project
40 plan shall include:

41 (1) A summary of the feasibility study done as defined in subsection
42 (b) of this section, ~~and amendments thereto~~;

43 (2) a reference to the district plan established under K.S.A. 2015

- 1 Supp. 12-17,165, and amendments thereto, that identifies the project area
 2 that is set forth in the project plan that is being considered;
- 3 (3) a description and map of the project area to be redeveloped;
- 4 (4) the relocation assistance plan as described in K.S.A. 2015 Supp.
 5 12-17,172, and amendments thereto;
- 6 (5) a detailed description of the buildings and facilities proposed to be
 7 constructed or improved in such area; and
- 8 (6) any other information the governing body of the city or county
 9 deems necessary to advise the public of the intent of the project plan.
- 10 (d) A copy of the STAR bond project plan prepared by a city shall be
 11 delivered to the board of county commissioners of the county and the
 12 board of education of any school district levying taxes on property within
 13 the STAR bond project area. A copy of the STAR bond project plan
 14 prepared by a county shall be delivered to the board of education of any
 15 school district levying taxes on property within the STAR bond project
 16 area.
- 17 (e) Upon a finding by the planning commission that the STAR bond
 18 project plan is consistent with the intent of the comprehensive plan for the
 19 development of the city, and a finding by the planning commission of the
 20 county, if any, with respect to a STAR bond project located wholly outside
 21 the boundaries of the city, that the STAR bond project plan is consistent
 22 with the intent of the comprehensive plan for the development of the
 23 county, the governing body of the city or county shall adopt a resolution
 24 stating that the city or county is considering the adoption of the STAR
 25 bond project plan. Such resolution shall:
- 26 (1) give notice that a public hearing will be held to consider the
 27 adoption of the STAR bond project plan and fix the date, hour and place of
 28 such public hearing;
- 29 (2) describe the boundaries of the STAR bond project district within
 30 which the STAR bond project will be located and the date of establishment
 31 of such district;
- 32 (3) describe the boundaries of the area proposed to be included within
 33 the STAR bond project area; and
- 34 (4) state that the STAR bond project plan, including a summary of the
 35 feasibility study, market study, relocation assistance plan and financial
 36 guarantees of the prospective developer and a description and map of the
 37 area to be redeveloped or developed are available for inspection during
 38 regular office hours in the office of the city clerk or county clerk,
 39 respectively.
- 40 (f) (1) The date fixed for the public hearing to consider the adoption
 41 of the STAR bond project plan shall be not less than 30 nor more than 70
 42 days following the date of the adoption of the resolution fixing the date of
 43 the hearing.

1 (2) A copy of the city or county resolution providing for the public
2 hearing shall be by certified mail, return receipt requested, sent by the city
3 to the board of county commissioners of the county and by the city or
4 county to the board of education of any school district levying taxes on
5 property within the proposed STAR bond project area. Copies also shall be
6 sent by certified mail, return receipt requested to each owner and occupant
7 of land within the proposed STAR bond project area not more than 10 days
8 following the date of the adoption of the resolution. The resolution shall be
9 published once in the official city or county newspaper not less than one
10 week nor more than two weeks preceding the date fixed for the public
11 hearing. A sketch clearly delineating the area in sufficient detail to advise
12 the reader of the particular land proposed to be included within the STAR
13 bond project area shall be published with the resolution.

14 (3) At the public hearing, a representative of the city or county shall
15 present the city's or county's proposed STAR bond project plan. Following
16 the presentation of the STAR bond project area, all interested persons shall
17 be given an opportunity to be heard. The governing body for good cause
18 shown may recess such hearing to a time and date certain, which shall be
19 fixed in the presence of persons in attendance at the hearing.

20 (g) The public hearing records and feasibility study shall be subject to
21 the open records act, K.S.A. 45-215, and amendments thereto.

22 (h) Upon conclusion of the public hearing, the governing body may
23 adopt the STAR bond project plan by ordinance or resolution passed upon
24 a two-thirds vote of the members.

25 (i) After the adoption by the city or county governing body of a
26 STAR bond project plan, the clerk of the city or county shall transmit a
27 copy of the description of the land within the STAR bond project district, a
28 copy of the ordinance or resolution adopting the plan and a map or plat
29 indicating the boundaries of the district to the clerk, appraiser and treasurer
30 of the county in which the district is located and to the governing bodies of
31 the county and school district which levy taxes upon any property in the
32 district. Such documents shall be transmitted following the adoption or
33 modification of the plan or a revision of the plan on or before January 1 of
34 the year in which the increment is first allocated to the taxing subdivision.

35 (j) If the STAR bond project plan is approved, the feasibility study
36 shall be supplemented to include a copy of the minutes of the governing
37 body meetings of any city or county whose bonding authority will be
38 utilized in the STAR bond project, evidencing that a STAR bond project
39 plan has been created, discussed and adopted by the city or county in a
40 regularly scheduled open public meeting.

41 (k) Any substantial changes as defined in K.S.A. 2015 Supp. 12-
42 17,162, and amendments thereto, to the STAR bond project plan as
43 adopted shall be subject to a public hearing following publication of notice

1 thereof at least twice in the official city or county newspaper.

2 (l) Any STAR bond project shall be completed within 20 years from
3 the date of the approval of the STAR bond project plan. The maximum
4 maturity on bonds issued to finance projects pursuant to this act shall not
5 exceed 20 years.

6 ~~(m) (1) Kansas resident employees shall be given priority~~
7 ~~consideration for employment in construction projects located in a STAR~~
8 ~~bond project area~~ *On and after January 1, 2017, any contractor, including*
9 *any subcontractors, contracted to perform work on a STAR bond project*
10 *shall employ a sufficient number of Kansas workers such that at least 70%*
11 *of the employees assigned by such contractor to perform such work shall*
12 *be Kansas workers. An employee shall be considered assigned to perform*
13 *such work if the employee performs any work that is directly related to*
14 *fulfilling the contractor's obligations with respect to the STAR bond*
15 *project regardless of the proportion of such work to the employee's regular*
16 *employment duties.*

17 (2) *All contractors subject to the provisions of this subsection shall*
18 *provide any personnel information to the department of commerce as*
19 *required by the secretary of commerce. The secretary shall notify the city*
20 *or county proposing the STAR bond project of any contractor that is not in*
21 *compliance with the provisions of this subsection. Upon such notification,*
22 *the city or county shall either provide the contractor an opportunity to*
23 *cure the noncompliance within a reasonable time, or terminate the*
24 *contract with such contractor.*

25 (3) *For the purposes of this subsection, the terms "Kansas worker"*
26 *and "employee" shall have the same meanings ascribed thereto in section*
27 *1, and amendments thereto.*

28 (n) Any developer of a STAR bond project shall commence work on
29 the project within two years from the date of adoption of the STAR bond
30 project plan. Should the developer fail to commence work on the STAR
31 bond project within the two-year period, funding for such project shall
32 cease and the developer of such project or complex shall have one year to
33 appeal to the secretary for reapproval of such project and the funding for
34 it. Should the project be reapproved, the two-year period for
35 commencement shall apply.

36 Sec. 3. K.S.A. 2015 Supp. 74-50,131 is hereby amended to read as
37 follows: 74-50,131. Commencing after December 31, 1999: (a) As used in
38 this act: "Qualified firm" means a for-profit business establishment,
39 subject to state income, sales or property taxes, identified under the North
40 American industry classification system (NAICS) subsectors 221, 311 to
41 339, 423 to 425, 481 to 519, 521 to 721 and 811 to 928 or is identified as a
42 corporate or regional headquarters or back-office operation of a national or
43 multi-national corporation regardless of NAICS designation. The secretary

1 of commerce shall determine eligibility when a difference exists between a
2 firm's primary business activity and NAICS designation. A business
3 establishment may be assigned a NAICS designation according to the
4 primary business activity at a single physical location in the state.

5 (b) In the case of firms in NAICS subsectors 221, 423 to 425, 481 to
6 519, 521 to 721 and 811 to 928, the business establishment must also
7 demonstrate the following:

8 (1) More than $\frac{1}{2}$ of its gross revenues are a result of sales to
9 commercial or governmental customers outside the state of Kansas; ~~or~~

10 (2) more than $\frac{1}{2}$ of its gross revenues are a result of sales to Kansas
11 manufacturing firms within NAICS subsectors 311 to 339; or

12 (3) more than $\frac{1}{2}$ of its gross revenues are a result of a combination of
13 sales described in (1) and (2).

14 (c) For purposes of determining whether one of the average wage
15 options described in subsection (d) below is satisfied, business
16 establishments located within a metropolitan county, as defined in K.S.A.
17 74-50,114, and amendments thereto, will be compared only to other
18 businesses within that metropolitan county, and business establishments
19 located outside of a metropolitan county will be compared to businesses
20 within an aggregation of counties representing the business establishment's
21 region of the state, which regional aggregation will exclude metropolitan
22 counties. Such aggregation shall be determined by the department of
23 commerce.

24 (d) Additionally, a business establishment having met the criteria as
25 established in subsection (a) or (b), and using the comparison method
26 described in subsection (c), must meet one of the following criteria:

27 (1) The establishment with 500 or fewer full-time equivalent
28 employees will provide an average wage that is above the average wage
29 paid by all firms with 500 or fewer full-time equivalent employees which
30 share the appropriate NAICS designation.

31 (2) The establishment with 500 or fewer full-time equivalent
32 employees is the sole firm within its appropriate NAICS designation
33 which has 500 or fewer full-time equivalent employees.

34 (3) The establishment with more than 500 full-time equivalent
35 employees will provide an average wage that is above the average wage
36 paid by firms with more than 500 full-time equivalent employees which
37 share the appropriate NAICS designation.

38 (4) The establishment with more than 500 full-time equivalent
39 employees is the sole firm within its appropriate NAICS designation
40 which has more than 500 full-time equivalent employees, in which event it
41 shall either provide an average wage that is above the average wage paid
42 by all firms with 500 or fewer full-time equivalent employees which share
43 the appropriate NAICS designation, or be the sole firm within its

1 appropriate NAICS designation.

2 (e) As an alternative to the requirements of subsections (c) and (d), a
3 firm having met the requirements of subsections (a) or (b), may qualify, if
4 excluding taxable disbursements to company owners, the business
5 establishment's annual average wage must be greater than or equal to 1.5
6 times the aggregate average wage paid by industries covered by the
7 employment security law based on data maintained by the secretary of
8 labor.

9 (f) For the purposes of this section, the number of full-time
10 equivalent employees shall be determined by dividing the number of hours
11 worked by part-time employees during the pertinent measurement interval
12 by an amount equal to the corresponding multiple of a 40-hour work week
13 and adding the quotient to the number of full-time employees.

14 (g) (1) *On and after January 1, 2017, a qualified firm shall employ a*
15 *sufficient number of Kansas workers such that at least 70% of the*
16 *employees assigned by such qualified firm to perform work in the state of*
17 *Kansas shall be Kansas workers. An employee shall be considered*
18 *assigned to perform work in the state of Kansas if the employee performs*
19 *any work that is performed in Kansas regardless of the proportion of such*
20 *work to the employee's regular employment duties.*

21 (2) *For the purposes of this subsection, the term "Kansas worker"*
22 *shall have the same meaning ascribed thereto in section 1, and*
23 *amendments thereto.*

24 (h) The secretary of commerce shall certify annually to the secretary
25 of revenue that a firm meets the criteria for a qualified firm and that the
26 firm is eligible for the benefits and assistance provided under this act. The
27 secretary of commerce is hereby authorized to obtain any and all
28 information necessary to determine such eligibility. Information obtained
29 under this section shall not be subject to disclosure pursuant to K.S.A. 45-
30 215 et seq., and amendments thereto, but shall upon request be made
31 available to the legislative post audit division. The secretary of commerce
32 shall publish rules and regulations for the implementation of this act. Such
33 rules and regulations shall include, but not be limited to:

34 (1) A definition of "training and education" for purposes of K.S.A.
35 74-50,132, and amendments thereto.

36 (2) Establishment of eligibility requirements and application
37 procedures for expenditures from the high performance incentive fund
38 created in K.S.A. 74-50,133, and amendments thereto.

39 (3) Establishment of approval guidelines for private consultants
40 authorized pursuant to K.S.A. 74-50,133, and amendments thereto.

41 (4) Establishment of guidelines for prioritizing business assistance
42 programs pursuant to K.S.A. 74-50,133, and amendments thereto.

43 (5) A definition of "commercial customer" for the purpose of K.S.A.

1 74-50,133, and amendments thereto.

2 (6) A definition of "headquarters" for the purpose of K.S.A. 74-
3 50,133, and amendments thereto.

4 (7) Establishment of guidelines concerning the use and disclosure of
5 any information obtained to determine the eligibility of a firm for the
6 assistance and benefits provided for by this act.

7 Sec. 4. K.S.A. 2015 Supp. 74-50,212 is hereby amended to read as
8 follows: 74-50,212. (a) In order to qualify for benefits under this act a
9 qualified company shall:

10 (1) Relocate to Kansas an existing business facility, office,
11 department or other operation doing business outside the state of Kansas
12 and locate the jobs directly related to such relocated business facility,
13 office, department or other operation in Kansas;

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

17 (3) expand an existing business facility, office, department or other
18 operation located in the state of Kansas and locate the jobs directly related
19 to such business facility, office, department or other operation in Kansas,
20 except that no payroll withholding taxes shall be retained prior to January
21 1, 2012.

22 A qualified company may utilize or contract with a third-party
23 employer to perform services whereby the third-party employer serves as
24 the legal employer of the new employees providing services to the
25 qualified company and such services are performed in Kansas and the
26 third-party employer and the new employees are subject to the Kansas
27 withholding and declaration of estimated tax act.

28 (b) Any qualified company, approved by the secretary for benefits
29 pursuant to paragraph (a), that locates its business operation in a
30 metropolitan county and will hire at least 10 new employees within two
31 years from the date the qualified company enters into an agreement with
32 the secretary pursuant to K.S.A. 2015 Supp. 74-50,213, and amendments
33 thereto, or any qualified company, approved by the secretary for benefits
34 pursuant to paragraph (a), that locates its business operation in a non-
35 metropolitan county and will hire at least five new employees within two
36 years from the date the qualified company enters into an agreement with
37 the secretary pursuant to K.S.A. 2015 Supp. 74-50,213, and amendments
38 thereto, shall: (1) Be eligible to retain 95% of the qualified company's
39 Kansas payroll withholding taxes for such new employees being paid the
40 county median wage or higher for a period of up to:

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

43 (B) six years if the median wage or average wage paid to the new

- 1 employees is equal to at least 110% of the county median wage;
- 2 (C) seven years if the median wage or average wage paid to the new
3 employees is equal to at least 120% of the county median wage; or
- 4 (2) be eligible to retain 95% of the qualified company's Kansas
5 payroll withholding taxes for such new employees being paid the county
6 median wage or higher for a period of up to five years if the median wage
7 or average wage paid to the new employees is equal to at least 100% of the
8 NAICS code industry average wage.
- 9 (c) Any qualified company, approved by the secretary for benefits
10 pursuant to paragraph (a), that engages in a high-impact project whereby
11 the qualified company will hire at least 100 new employees within two
12 years from the date the qualified company enters into an agreement with
13 the secretary pursuant to K.S.A. 2015 Supp. 74-50,213, and amendments
14 thereto, shall be eligible to retain 95% of the qualified company's Kansas
15 payroll withholding taxes for such new employees being paid the county
16 median wage or higher for a period of up to:
- 17 (1) Seven years if the median wage or average wage paid to the new
18 employees is equal to at least 100% of the county median wage;
- 19 (2) eight years if the median wage or average wage paid to the new
20 employees is equal to at least 110% of the county median wage;
- 21 (3) nine years if the median wage or average wage paid to the new
22 employees is equal to at least 120% of the county median wage; or
- 23 (4) ten years if the median wage or average wage paid to the new
24 employees is equal to at least 140% of the county median wage.
- 25 (d) In the event that a qualified company contracts with a third party
26 as described in subsection (a), the third party shall remit payments equal to
27 the amount of Kansas payroll withholding taxes the qualified company is
28 eligible to retain under this section to the qualified company, and report
29 such amount to the department of revenue as required pursuant to
30 ~~subsection (a) of~~ K.S.A. 2015 Supp. 74-50,214(a), and amendments
31 thereto.
- 32 (e) (1) *On and after January 1, 2017, a qualified company shall*
33 *employ a sufficient number of Kansas workers such that at least 70% of*
34 *the employees assigned by such qualified firm to perform work in the state*
35 *of Kansas shall be Kansas workers. An employee shall be considered*
36 *assigned to perform work in the state of Kansas if the employee performs*
37 *any work that is performed in Kansas regardless of the proportion of such*
38 *work to the employee's regular employment duties.*
- 39 (2) *For the purposes of this subsection, the term "Kansas worker"*
40 *shall have the same meaning ascribed thereto in section 1, and*
41 *amendments thereto.*
- 42 (f) Commencing January 1, 2013, and ending June 30, 2018, any
43 company, which meets the criteria provided pursuant to the provisions of

1 K.S.A. 2015 Supp. 74-50,211, and amendments thereto, that retains the
2 employees of an existing business unit located in Kansas and enters into an
3 agreement with the secretary pursuant to K.S.A. 2015 Supp. 74-50,213,
4 and amendments thereto, shall be eligible to retain 95% of the qualified
5 company's Kansas payroll withholding taxes for such employees for a
6 period of up to five years.

7 ~~(f)~~ (g) (1) Commencing January 1, 2013, and ending June 30, 2018,
8 pursuant to the provisions of subsection (e), the secretary of commerce, in
9 the secretary's sole determination, may provide the benefits of the
10 promoting employment across Kansas act for situations where it is deemed
11 necessary by the secretary that the state of Kansas provide incentives for a
12 company or its operations currently located in Kansas to remain in Kansas
13 so as to keep its retained jobs. The secretary shall establish and verify that
14 a 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 factors
22 including, but not limited to, the quantity, quality or wages of the retained
23 jobs involved.

24 (2) Effective January 1, 2013, and ending June 30, 2018, the secretary
25 may use the promoting employment across Kansas act in conjunction with
26 other economic development programs to develop a retention package.

27 ~~(g)~~ (h) The provisions of this act as in effect prior to the effective date
28 of this act shall apply to employers who have entered into agreements with
29 the secretary prior to July 1, 2011. The provisions of this act shall apply to
30 employers who enter into agreements with the secretary on and after July
31 1, 2011.

32 ~~(h)~~ (i) In the event a qualified company entered into an agreement for
33 benefits under this section prior to January 1, 2013, such qualified
34 company may request the secretary to extend the benefit term of such
35 agreement by a period of up to two additional years. If in the secretary's
36 discretion it is necessary to provide the qualified company with all benefits
37 intended under such agreement, the extension may be granted.

38 Sec. 5. K.S.A. 2015 Supp. 74-50,217 is hereby amended to read as
39 follows: 74-50,217. The secretary of revenue in consultation with the
40 secretary of commerce shall develop a form which must be completed
41 annually by any business that received any tax benefit pursuant to the
42 promoting employment across Kansas act and amendments thereto. Such
43 form shall be developed no later than December 31, 2010, and shall

1 request, at a minimum, the information required by ~~paragraphs (1), (2),~~
2 ~~(3), (4), (5) and (6) of subsection (a) of K.S.A. 79-32,243(a), and~~
3 amendments thereto, and such other information as shall be required by
4 the secretary of revenue and the secretary of commerce. Upon completion
5 of the form, the business completing the form shall file the form
6 electronically with the secretary of revenue or submit the form in the
7 manner prescribed by the secretary of revenue. The contents of the
8 completed form shall be confidential except as provided in K.S.A. 79-
9 3234, and amendments thereto.

10 Sec. 6. K.S.A. 2015 Supp. 79-32,154 is hereby amended to read as
11 follows: 79-32,154. As used in this act, the following words and phrases
12 shall have the meanings respectively ascribed to them herein:

13 (a) "Facility" shall mean any factory, mill, plant, refinery, warehouse,
14 feedlot, building or complex of buildings located within the state,
15 including the land on which such facility is located and all machinery,
16 equipment and other real and tangible personal property located at or
17 within such facility used in connection with the operation of such facility.
18 The word "building" shall include only structures within which individuals
19 are customarily employed or which are customarily used to house
20 machinery, equipment or other property.

21 (b) "Qualified business facility" shall mean a facility which satisfies
22 the requirements of paragraphs (1) ~~and~~, (2) *and* (3) of this subsection.

23 (1) Such facility is employed by the taxpayer in the operation of a
24 revenue producing enterprise, as defined in subsection (c). Such facility
25 shall not be considered a qualified business facility in the hands of the
26 taxpayer if the taxpayer's only activity with respect to such facility is to
27 lease it to another person or persons. If the taxpayer employs only a
28 portion of such facility in the operation of a revenue producing enterprise,
29 and leases another portion of such facility to another person or persons or
30 does not otherwise use such other portions in the operation of a revenue
31 producing enterprise, the portion employed by the taxpayer in the
32 operation of a revenue producing enterprise shall be considered a qualified
33 business facility, if the requirements of paragraph (2) of this subsection are
34 satisfied.

35 (2) If such facility was acquired by the taxpayer from another person
36 or persons, such facility was not employed, immediately prior to the
37 transfer of title to such facility to the taxpayer, or to the commencement of
38 the term of the lease of such facility to the taxpayer, by any other person or
39 persons in the operation of a revenue producing enterprise and the
40 taxpayer continues the operation of the same or substantially identical
41 revenue producing enterprise, as defined in subsection (i), at such facility.

42 (3) *(A) On and after January 1, 2017, a qualified business facility*
43 *shall employ a sufficient number of Kansas workers such that at least 70%*

1 *of the employees assigned by such facility to perform work in the state of*
 2 *Kansas shall be Kansas workers. An employee shall be considered*
 3 *assigned to perform work in the state of Kansas if the employee performs*
 4 *any work that is performed in Kansas regardless of the proportion of such*
 5 *work to the employee's regular employment duties.*

6 *(B) For the purposes of this subsection, the term "Kansas worker"*
 7 *shall have the same meaning ascribed thereto in section 1, and*
 8 *amendments thereto.*

9 (c) "Revenue producing enterprise" shall mean:

- 10 (1) The assembly, fabrication, manufacture or processing of any
- 11 agricultural, mineral or manufactured product;
- 12 (2) the storage, warehousing, distribution or sale of any products of
- 13 agriculture, aquaculture, mining or manufacturing;
- 14 (3) the feeding of livestock at a feedlot;
- 15 (4) the operation of laboratories or other facilities for scientific,
- 16 agricultural, aquacultural, animal husbandry or industrial research,
- 17 development or testing;
- 18 (5) the performance of services of any type;
- 19 (6) the feeding of aquatic plants and animals at an aquaculture
- 20 operation;
- 21 (7) the administrative management of any of the foregoing activities;
- 22 or
- 23 (8) any combination of any of the foregoing activities.

24 "Revenue producing enterprise" shall not mean a swine production
 25 facility as defined in K.S.A. 17-5903, and amendments thereto, that is
 26 owned or leased by a corporation or limited liability company.

27 (d) "Qualified business facility employee" shall mean a person
 28 employed by the taxpayer in the operation of a qualified business facility
 29 during the taxable year for which the credit allowed by K.S.A. 79-32,153,
 30 and amendments thereto, is claimed:

- 31 (1) A person shall be deemed to be so engaged if such person
- 32 performs duties in connection with the operation of the qualified business
- 33 facility on: (A) A regular, full-time basis; (B) a part-time basis, provided
- 34 such person is customarily performing such duties at least 20 hours per
- 35 week throughout the taxable year; or (C) a seasonal basis, provided such
- 36 person performs such duties for substantially all of the season customary
- 37 for the position in which such person is employed. The number of
- 38 qualified business facility employees during any taxable year shall be
- 39 determined by dividing by 12 the sum of the number of qualified business
- 40 facility employees on the last business day of each month of such taxable
- 41 year. If the qualified business facility is in operation for less than the entire
- 42 taxable year, the number of qualified business facility employees shall be
- 43 determined by dividing the sum of the number of qualified business

1 facility employees on the last business day of each full calendar month
2 during the portion of such taxable year during which the qualified business
3 facility was in operation by the number of full calendar months during
4 such period. Notwithstanding the provisions of this subsection, for the
5 purpose of computing the credit allowed by K.S.A. 79-32,153, and
6 amendments thereto, in the case of an investment in a qualified business
7 facility, which facility existed and was operated by the taxpayer or related
8 taxpayer prior to such investment, the number of qualified business facility
9 employees employed in the operation of such facility shall be reduced by
10 the average number, computed as provided in this subsection, of
11 individuals employed in the operation of the facility during the taxable
12 year preceding the taxable year in which the qualified business facility
13 investment was made at the facility.

14 (2) For taxable years commencing after December 31, 1997, in the
15 case of a taxpayer claiming a credit against the premium tax and privilege
16 fees imposed pursuant to K.S.A. 40-252, and amendments thereto or the
17 privilege tax as measured by net income of financial institutions imposed
18 pursuant to ~~chapter 79~~ article 11 *of chapter 79* of the Kansas Statutes
19 Annotated, *and amendments thereto*, "qualified business employee" shall
20 not mean any person who is employed in the operation of a qualified
21 business facility in the state due to the merger, acquisition or other
22 reconfiguration of the taxpayer unless such employee's position represents
23 a net gain of total positions created by the taxpayer and the employee's
24 position was not in existence at the time of the merger acquisition or other
25 reconfiguration of the taxpayer.

26 (e) "Qualified business facility investment" shall mean the value of
27 the real and tangible personal property, except inventory or property held
28 for sale to customers in the ordinary course of the taxpayer's business,
29 which constitutes the qualified business facility, or which is used by the
30 taxpayer in the operation of the qualified business facility, during the
31 taxable year for which the credit allowed by K.S.A. 79-32,153, and
32 amendments thereto, is claimed. The value of such property during such
33 taxable year shall be: (1) Its original cost if owned by the taxpayer; or (2)
34 eight times the net annual rental rate, if leased by the taxpayer. The net
35 annual rental rate shall be the annual rental rate paid by the taxpayer less
36 any annual rental rate received by the taxpayer from subrentals. The
37 qualified business facility investment shall be determined by dividing by
38 12 the sum of the total value of such property on the last business day of
39 each calendar month of the taxable year. If the qualified business facility
40 is in operation for less than an entire taxable year, the qualified business
41 facility investment shall be determined by dividing the sum of the total
42 value of such property on the last business day of each full calendar month
43 during the portion of such taxable year during which the qualified business

1 facility was in operation by the number of full calendar months during
2 such period. Notwithstanding the provisions of this subsection, for the
3 purpose of computing the credit allowed by K.S.A. 79-32,153, and
4 amendments thereto, in the case of an investment in a qualified business
5 facility, which facility existed and was operated by the taxpayer or related
6 taxpayer prior to such investment the amount of the taxpayer's qualified
7 business facility investment in such facility shall be reduced by the
8 average amount, computed as provided in this subsection, of the
9 investment of the taxpayer or a related taxpayer in the facility for the
10 taxable year preceding the taxable year in which the qualified business
11 facility investment was made at the facility.

12 (f) "Commencement of commercial operations" shall be deemed to
13 occur during the first taxable year for which the qualified business facility
14 is first available for use by the taxpayer, or first capable of being used by
15 the taxpayer, in the revenue producing enterprise in which the taxpayer
16 intends to use the qualified business facility.

17 (g) "Qualified business facility income" shall mean the Kansas
18 taxable income derived by the taxpayer from the operation of the qualified
19 business facility. If a taxpayer has income derived from the operation of a
20 qualified business facility as well as from other activities conducted within
21 this state, the Kansas taxable income derived by the taxpayer from the
22 operation of the qualified business facility shall be determined by
23 multiplying the taxpayer's Kansas taxable income by a fraction, the
24 numerator of which is the property factor, as defined in paragraph (1), plus
25 the payroll factor, as defined in paragraph (2), and the denominator of
26 which is two. In the case of financial institutions, the property and payroll
27 factors shall be computed utilizing the specific provisions of the
28 apportionment method applicable to financial institutions, if enacted, and
29 the qualified business facility income shall be based upon net income.

30 (1) The property factor is a fraction, the numerator of which is the
31 average value of the taxpayer's real and tangible personal property owned
32 or rented and used in connection with the operation of the qualified
33 business facility during the tax period, and the denominator of which is the
34 average value of all the taxpayer's real and tangible personal property
35 owned or rented and used in this state during the tax period. The average
36 value of all such property shall be determined as provided in K.S.A. 79-
37 3281 and 79-3282, and amendments thereto.

38 (2) The payroll factor is a fraction, the numerator of which is the total
39 amount paid during the tax period by the taxpayer for compensation to
40 persons qualifying as qualified business facility employees, as determined
41 under subsection (d), at the qualified business facility, and the denominator
42 of which is the total amount paid in this state during the tax period by the
43 taxpayer for compensation. The compensation paid in this state shall be

1 determined as provided in K.S.A. 79-3283, and amendments thereto.

2 The formula set forth in this subsection (g) shall not be used for any
3 purpose other than determining the qualified business facility income
4 attributable to a qualified business facility.

5 (h) "Related taxpayer" shall mean: (1) A corporation, partnership,
6 trust or association controlled by the taxpayer; (2) an individual,
7 corporation, partnership, trust or association in control of the taxpayer; or
8 (3) a corporation, partnership, trust or association controlled by an
9 individual, corporation, partnership, trust or association in control of the
10 taxpayer. For the purposes of this act, "control of a corporation" shall mean
11 ownership, directly or indirectly, of stock possessing at least 80% of the
12 total combined voting power of all classes of stock entitled to vote and at
13 least 80% of all other classes of stock of the corporation; "control of a
14 partnership or association" shall mean ownership of at least 80% of the
15 capital or profits interest in such partnership or association; and "control of
16 a trust" shall mean ownership, directly or indirectly, of at least 80% of the
17 beneficial interest in the principal or income of such trust.

18 (i) "Same or substantially identical revenue producing enterprise"
19 shall mean a revenue producing enterprise in which the products produced
20 or sold, services performed or activities conducted are the same in
21 character and use, are produced, sold, performed or conducted in the same
22 manner and to or for the same type of customers as the products, services
23 or activities produced, sold, performed or conducted in another revenue
24 producing enterprise.

25 Sec. 7. K.S.A. 2015 Supp. 79-32,243 is hereby amended to read as
26 follows: 79-32,243. (a) For tax years commencing after December 31,
27 2005, any taxpayer claiming credits pursuant to K.S.A. 74-50,132, 79-
28 32,153 or 79-32,160a, and amendments thereto, as a condition for
29 claiming and qualifying for such credits, shall provide the following
30 information as part of the tax return, in which such credits are claimed,
31 which shall be used by the department of revenue in evaluating the
32 effectiveness of such tax credit programs, pursuant to K.S.A. 2015 Supp.
33 74-99b35, and amendments thereto:

34 (1) Actual jobs created as a direct result of the expenditures on which
35 such credit claim is based, if the taxpayer has previously submitted an
36 estimate of such number of actual jobs created to the department of
37 commerce as a part of applying for certification for such program
38 participation;

39 (2) additional payroll generated as a direct result of the expenditures
40 on which such credit claim is based, if the taxpayer has previously
41 submitted an estimate of such amount of additional payroll generated to
42 the department of commerce as a part of applying for certification for such
43 program participation;

1 (3) actual jobs retained as a direct result of the expenditures on which
2 such credit claim is based, if the taxpayer has previously submitted an
3 estimate of actual jobs retained to the department of commerce as a part of
4 applying for certification for such program participation;

5 (4) additional revenue generated as a direct result of the expenditures
6 on which such credit claim is based, if the taxpayer has previously
7 submitted an estimate of such amount of additional revenue generated to
8 the department of commerce as a part of applying for certification for such
9 program participation;

10 (5) additional sales generated as a direct result of the expenditures on
11 which such credit claim is based, if the taxpayer has previously submitted
12 an estimate of additional sales generated to the department of commerce as
13 a part of applying for certification for program participation;

14 (6) total employment and payroll at the end of the tax year in which
15 the credits are claimed; ~~and~~

16 (7) *any personnel information as required by the secretary of revenue*
17 *for the purpose of verifying the number of Kansas workers, as that term is*
18 *defined in section 1, and amendments thereto, employed by the qualified*
19 *business facility; and*

20 (8) such further information as shall be required by the secretary of
21 revenue.

22 (b) Such credits specified in subsection (a) shall not be denied solely
23 on the basis of the information provided by the taxpayer pursuant to
24 subsections (a)(1) through (a)(~~7~~) (8).

25 Sec. 8. K.S.A. 2015 Supp. 12-17,166, 74-50,131, 74-50,212, 74-
26 50,217, 79-32,154 and 79-32,243 are hereby repealed.

27 Sec. 9. This act shall take effect and be in force from and after its
28 publication in the statute book.