

REVISED
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SUPPLEMENTAL NOTE ON SENATE BILL NO. 474

As Amended by Senate Committee of the Whole

Brief*

SB 474, as amended, would authorize the State Finance Council to oversee the sale of the Kansas Bioscience Authority (KBA) or substantially all the assets of the authority. The authorization would apply regardless of whether the Legislature is in session.

The bill also would revise provisions of the Sales Tax and Revenue (STAR) Bond Financing Act to:

- Prohibit sharing of revenue from one district to another by making every existing and future district a silo project. This provision would not apply to projects approved prior to March 1, 2016;
- Provide for an annual Legislative Division of Post Audit (LPA) performance audit of the STAR bond projects to determine:
 - The current status of all STAR bond projects;
 - Significant changes to each project during the previous year; and
 - Whether each project has complied with all requirements of the STAR Bond Financing Act and any other issues determined by the Legislative Post Audit Committee;
- Require the city or county with a STAR Bond district to pay the cost of the audit, which would be

*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <http://www.kslegislature.org>

approved by the Legislative Post Audit Committee;
and

- Void the provisos in 2016 House Sub. for SB 161 (the Appropriations bill) that prohibit the consideration, review, or approval of any STAR bond project in Wyandotte County, except for refunding of existing bonds in Wyandotte County in FY 2016 and FY 2017.

The bill also would modify definitions relating to STAR bond projects, including “project costs,” “STAR bond project,” and “STAR bond project district” to:

- Add an economic impact, market, and market impact study to the definition of allowable project costs;
- Add engineering, architectural, legal, consulting, accounting and other indirect costs that exceed 3.0 percent of the total STAR bond project cost to those items that are nonallowable project costs;
- Add to the definition of “STAR bond project area” to include blighted areas, a term defined by law, with at least \$35.0 million in projected gross annual sales;
- Require that no later than July 1, 2017, the Secretary of Commerce would adopt rules and regulations to establish reasonable time frames for the initiation and completion of a STAR bond project and other time frames and milestones for developers in the Secretary’s discretion and provide for financial penalties for the failure to meet such time frames and milestones. For all STAR bond project districts established after July 1, 2016, the failure of a project to be completed by the deadline established by the Secretary would result in automatic and immediate reversion to the State of Kansas of title to all real estate and any

improvements acquired or paid with STAR bond proceeds;

- Require the Secretary complete an internal review of the overall viability of a project; and after consulting with the Secretary of Revenue, an assessment and certification of the impact of the project on sales tax revenues into the State General Fund, which would include the private financing components of the STAR bond project prior to approval;
- Allow the Secretary to give conditional approval of any application on the provisions that the State retain a reversionary interest in any real property acquired with STAR bond proceeds and up to 10 percent of any STAR bond proceeds be placed into escrow until any conditions imposed by the Secretary have been met;
- Require project developers to demonstrate private sector funding sufficient to fund 51 percent of the project costs prior to the Secretary's approval of a STAR bond project plan. The Secretary could require a reasonable portion of funds to be placed into escrow as a condition of approving the project, and a percentage of funds placed into escrow could be forfeited to the State of Kansas as a penalty for failure to meet funding requirements set by the Secretary;
- Allow the Secretary, as a condition of approving a project or project financing, to retain a proportional carried equity interest in land and buildings to be financed by the proceeds of STAR bonds and receive a percentage of gross receipts received by the developer or developers until the STAR bonds have been repaid. The equity interest and percentage of gross receipts to be retained by the State of Kansas would be based on the state sales

and use tax portion of the funding for the project. Upon the State recovering the portion of the project financed with state sales taxes, the developer would have have a right of first refusal to purchase the State's carried equity interest at a strike price or fair market value, whichever would be greater;

- Require the economic impact study to be conducted by an independent economic consultant, in consultation with the city or county about an acceptable range of fees.
- Add to the project plan requirements a description of the posed competitive bid process to be used for the construction of the project; and
- Allow the Secretary to set a deadline earlier than the current 20 year time frame for completion of the project and to set a project initiative deadline earlier than the current 2 year time frame.

The bill would be in effect upon publication in the *Kansas Register*.

Background

In the Senate Committee hearing on SB 474, a representative from the KBA provided an update on its status. KBA anticipated receiving the expected transfers but did not receive the full amount this year. KBA began working on creative solutions to how it can operate in the future given the circumstances. The representative noted four activities KBA needs to adjust:

- Scale down operations due to reduced transfers by decreasing from 14 to 3 staff;
- Work with the newly appointed Secretary of Commerce to explore options;

- Privatize KBA functions, which include outstanding grant commitments, real estate, investment portfolio, and
- Alignment within the Board itself.

The representative noted KBA wanted the transition to be an open and transparent process and to seek a final solution with options for all purposes, but mainly to operate for the good of Kansas. The representative noted originally the funding for the KBA was to sunset in 2019.

The KBA representative also noted the following:

- It would be preferable to proceed with any sale of assets sooner rather than later, because KBA is investing in small start-up companies and not having the funds to see them through maturity will put the companies at a disadvantage;
- An investment banker has analyzed assets as KBA is ready to market them to potential bidders, and KBA has given the investment banker characteristics and requirements for the bids, including the option of retaining an equity position;
- Any buyer would be unlikely to agree to a requirement that new capital not dilute the State's position;
- KBA's current grant commitment liabilities on the balance sheet now most likely would transfer;
- Long-term solutions for the building and land will be developed; and
- Any funds left over will be transferred to the State General Fund. The representative quantified the liabilities as of today to be \$28.0 million in commitments (building, land, outstanding grants)

and noted sale of the building probably will pay off the debt.

The Department of Commerce provided written testimony in support of the bill, stating the Department would work with KBA to ensure the State receives a fair return on the sale of the assets.

The Senate Ways and Means amended the bill to:

- Prohibit sharing of revenue from one STAR Bond district to another, excluding projects approved prior to March 1, 2016;
- Provide an annual LPA performance audit of the STAR Bond Projects, which would be paid by the city or county of the project district; and
- Void certain provisos in 2016 House Sub. for SB 161.

The Senate Committee of the Whole amended the bill to provide for oversight by the Secretary of Commerce and to incorporate provisions of STAR bond reform as recommended by the 2005 LPA Study. The amendments incorporate the recommendations in the study to:

- Clarify the Legislature's intent regarding the use of STAR bond moneys for expenses that are not direct land acquisition or site-improvement costs;
- Establish a formal mechanism that makes a State official responsible for reviewing and approving the terms of major agreements such as leases, bond agreements, and land deals connected with a STAR bond project-that exceed a certain dollar amount.
- Require periodic audits for all STAR bond projects to determine whether STAR bond moneys are

being used only for authorized purposes, and are not being used for purposes that are ineligible or questionable; and

- Include statutory provisions for recouping moneys that are not spent in accordance with the law.

The fiscal note indicates the bill, as introduced, would have no fiscal effect. However, *The FY 2017 Governor's Budget Report* does include \$25.0 million in State General Fund revenue from the sale of KBA assets.