

As Amended by House Committee

Session of 2021

SENATE BILL No. 65

By Committee on Commerce

1-25

1 AN ACT concerning economic development; relating to the high
2 performance incentive fund; workforce training program participation
3 requirements; **transferability of tax credits**; amending K.S.A. 74-
4 50,133 and 79-32,160a and repealing the existing sections.

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

7 Section 1. K.S.A. 74-50,133 is hereby amended to read as follows:
8 74-50,133. There is hereby created within the department of commerce the
9 "high performance incentive fund" to provide matching funds for business
10 assistance and consulting services to qualified firms under the provisions
11 of K.S.A. 74-50,131, and amendments thereto, *or* that are entitled to a
12 workforce training tax credit under the provisions of K.S.A. 74-50,132,
13 and amendments thereto, ~~or have received written approval for and are~~
14 ~~participating, at the time the funds are sought, in the Kansas industrial~~
15 ~~training, Kansas industrial retraining or state of Kansas investments in~~
16 ~~lifelong learning program,~~ subject to appropriation of funds and program
17 criteria, as ~~hereinafter~~ provided *in this section*. The department of
18 commerce may provide funds to qualified firms, on a matching basis, to
19 pay up to 50% of such firm's costs of acquiring consulting services
20 provided by the mid-America manufacturing technology center, or
21 approved private consultants to assist in improving the firm's management,
22 production processes or product or service quality. Qualified firms also
23 shall receive priority consideration for any other business assistance
24 programs administered by the department of commerce.

25 Sec. 2. K.S.A. 79-32,160a is hereby amended to read as follows: 79-
26 32,160a. (a) For taxable years commencing after December 31, 1999, and
27 before January 1, 2012, any taxpayer who shall invest in a qualified
28 business facility, as defined in ~~subsection (b) of~~ K.S.A. 79-32,154(b), and
29 amendments thereto, and effective for tax years commencing after
30 December 31, 2010, and before January 1, 2012, located in an area other
31 than a metropolitan county as defined in either K.S.A.: 74-50,114 or 74-
32 50,211, and amendments thereto, and also meets the definition of a
33 business in ~~subsection (b) of~~ K.S.A. 74-50,114(b), and amendments
34 thereto, shall be allowed a credit for such investment, in an amount
35 determined under subsection (b) or (c), as the case requires, against the tax
36 imposed by the Kansas income tax act or where the qualified business

1 facility is the principal place from which the trade or business of the
2 taxpayer is directed or managed and the facility has facilitated the creation
3 of at least 20 new full-time positions, against the premium tax or privilege
4 fees imposed pursuant to K.S.A. 40-252, and amendments thereto, or as
5 measured by the net income of financial institutions imposed pursuant to
6 article 11 of chapter 79 of the Kansas Statutes Annotated, and amendments
7 thereto, for the taxable year during which commencement of commercial
8 operations, as defined in ~~subsection (f) of K.S.A. 79-32,154(f)~~, and
9 amendments thereto, occurs at such qualified business facility. In the case
10 of a taxpayer who meets the definition of a manufacturing business in
11 ~~subsection (d) of K.S.A. 74-50,114(d)~~, and amendments thereto, no credit
12 shall be allowed under this section unless the number of qualified business
13 facility employees, as determined under ~~subsection (d) of K.S.A. 79-~~
14 ~~32,154(d)~~, and amendments thereto, engaged or maintained in employment
15 at the qualified business facility as a direct result of the investment by the
16 taxpayer for the taxable year for which the credit is claimed equals or
17 exceeds two. In the case of a taxpayer who meets the definition of a
18 nonmanufacturing business in ~~subsection (f) of K.S.A. 74-50,114(f)~~, and
19 amendments thereto, no credit shall be allowed under this section unless
20 the number of qualified business facility employees, as determined under
21 ~~subsection (d) of K.S.A. 79-32,154(d)~~, and amendments thereto, engaged
22 or maintained in employment at the qualified business facility as a direct
23 result of the investment by the taxpayer for the taxable year for which the
24 credit is claimed equals or exceeds five. Where an employee performs
25 services for the taxpayer outside the qualified business facility, the
26 employee shall be considered engaged or maintained in employment at the
27 qualified business facility if: (1) The employee's service performed outside
28 the qualified business facility is incidental to the employee's service inside
29 the qualified business facility; or (2) the base of operations or, the place
30 from which the service is directed or controlled, is at the qualified business
31 facility.

32 (b) The credit allowed by subsection (a) for any taxpayer who invests
33 in a qualified business facility ~~which~~ that is located in a designated
34 nonmetropolitan region established under K.S.A. 74-50,116, and
35 amendments thereto, on or after the effective date of this act, shall be a
36 portion of the income tax imposed by the Kansas income tax act on the
37 taxpayer's Kansas taxable income, the premium tax or privilege fees
38 imposed pursuant to K.S.A. 40-252, and amendments thereto, or the
39 privilege tax as measured by the net income of financial institutions
40 imposed pursuant to article 11 of chapter 79 of the Kansas Statutes
41 Annotated, and amendments thereto, for the taxable year for which such
42 credit is allowed, but in the case where the qualified business facility
43 investment was made prior to January 1, 1996, not in excess of 50% of

1 such tax. Such portion shall be an amount equal to the sum of the
2 following:

3 (1) ~~Two thousand five hundred dollars~~\$2,500 for each qualified
4 business facility employee determined under K.S.A. 79-32,154, and
5 amendments thereto; plus

6 (2) ~~one thousand dollars~~\$1,000 for each \$100,000, or major fraction
7 thereof, which shall be deemed to be 51% or more, in qualified business
8 facility investment, as determined under K.S.A. 79-32,154, and
9 amendments thereto.

10 (c) The credit allowed by subsection (a) for any taxpayer who invests
11 in a qualified business facility, ~~which~~ *that* is not located in a
12 nonmetropolitan region established under K.S.A. 74-50,116, and
13 amendments thereto, and effective for tax years commencing after
14 December 31, 2010, and before January 1, 2012, located in an area other
15 than a metropolitan county as defined in either K.S.A. 74-50,114 or 74-
16 50,211, and amendments thereto, and ~~which~~ *that* also meets the definition
17 of business in ~~subsection (b) of~~ K.S.A. 74-50,114(*b*), and amendments
18 thereto, on or after the effective date of this act, shall be a portion of the
19 income tax imposed by the Kansas income tax act on the taxpayer's
20 Kansas taxable income, the premium tax or privilege fees imposed
21 pursuant to K.S.A. 40-252, and amendments thereto, or the privilege tax as
22 measured by the net income of financial institutions imposed pursuant to
23 article 11 of chapter 79 of the Kansas Statutes Annotated, and amendments
24 thereto, for the taxable year for which such credit is allowed, but in the
25 case where the qualified business facility investment was made prior to
26 January 1, 1996, not in excess of 50% of such tax. Such portion shall be an
27 amount equal to the sum of the following:

28 (1) ~~One thousand five hundred dollars~~\$1,500 for each qualified
29 business facility employee as determined under K.S.A. 79-32,154, and
30 amendments thereto; and

31 (2) ~~one thousand dollars~~\$1,000 for each \$100,000, or major fraction
32 thereof, which shall be deemed to be 51% or more, in qualified business
33 facility investment as determined under K.S.A. 79-32,154, and
34 amendments thereto.

35 (d) The credit allowed by subsection (a) for each qualified business
36 facility employee and for qualified business facility investment shall be a
37 one-time credit. If the amount of the credit allowed under subsection (a)
38 exceeds the tax imposed by the Kansas income tax act on the taxpayer's
39 Kansas taxable income, the premium tax and privilege fees imposed
40 pursuant to K.S.A. 40-252, and amendments thereto, or the privilege tax as
41 measured by the net income of financial institutions imposed pursuant to
42 article 11 of chapter 79 of the Kansas Statutes Annotated, and amendments
43 thereto, for the taxable year, or in the case where the qualified business

1 facility investment was made prior to January 1, 1996, 50% of such tax
2 imposed upon the amount which exceeds such tax liability or such portion
3 thereof may be carried over for credit in the same manner in the
4 succeeding taxable years until the total amount of such credit is used.
5 Except that, before the credit is allowed, a taxpayer, who meets the
6 definition of a manufacturing business in ~~subsection (d)~~ of K.S.A. 74-
7 50,114(d), and amendments thereto, shall recertify annually that the net
8 increase of a minimum of two qualified business facility employees has
9 continued to be maintained and a taxpayer, who meets the definition of a
10 nonmanufacturing business in ~~subsection (f)~~ of K.S.A. 74-50,114(f), and
11 amendments thereto, shall recertify annually that the net increase of a
12 minimum of five qualified business employees has continued to be
13 maintained.

14 (e) Notwithstanding the foregoing provisions of this section, and
15 except as otherwise provided in this subsection, any taxpayer qualified and
16 certified under the provisions of K.S.A. 74-50,131, and amendments
17 thereto; ~~which, that~~ prior to making a commitment to invest in a qualified
18 Kansas business, has filed a certificate of intent to invest in a qualified
19 business facility in a form satisfactory to the secretary of commerce; ~~and~~
20 ~~that has received written approval from the secretary of commerce for~~
21 ~~participation and has participated, during the tax year for which the~~
22 ~~exemption is claimed, in the Kansas industrial training, Kansas industrial~~
23 ~~retraining or the state of Kansas investments in lifelong learning program~~
24 ~~or is eligible for the tax credit established in K.S.A. 74-50,132, and~~
25 ~~amendments thereto~~, shall be entitled to a credit in an amount equal to
26 10% of that portion of the qualified business facility investment ~~which~~
27 ~~that~~ exceeds \$50,000 in lieu of the credit provided in subsection (b)(2) or
28 (c)(2) without regard to the number of qualified business facility
29 employees engaged or maintained in employment at the qualified business
30 facility. For tax years beginning on or after January 1, 2012, for a qualified
31 business facility investment in Douglas, Johnson, Sedgwick, Shawnee or
32 Wyandotte ~~counties~~ county, such credit shall be in an amount equal to 10%
33 of that portion of the qualified business facility investment ~~which that~~
34 exceeds \$1,000,000. Any taxpayer who has filed a certificate of intent to
35 invest in a qualified business facility pursuant to this subsection in
36 Douglas, Johnson, Sedgwick, Shawnee or Wyandotte county prior to
37 December 31, 2011, and commences investments in a qualified business
38 facility prior to December 31, 2013, may claim credits under K.S.A. 74-
39 50,131, 74-50,132 and ~~subsection (e) of 79-32,160a(e)~~, and amendments
40 thereto, in an amount equal to 10% of that portion of the qualified business
41 facility investment ~~which that~~ exceeds \$50,000. Timing modifications may
42 be authorized at the discretion of the secretary of commerce and the
43 secretary of revenue during the transition period. The credit allowed by

1 this subsection shall be a one-time credit. If the amount thereof exceeds
2 the tax imposed by the Kansas income tax act on the taxpayer's Kansas
3 taxable income or the premium tax or privilege fees imposed pursuant to
4 K.S.A. 40-252, and amendments thereto, or the privilege tax as measured
5 by net income of financial institutions imposed pursuant to article 11 of
6 chapter 79 of the Kansas Statutes Annotated, and amendments thereto, for
7 the taxable year, the amount thereof ~~which~~ *that* exceeds such tax liability
8 may be carried forward for credit in the succeeding taxable year or years
9 until the total amount of the tax credit is used, except that no such tax
10 credit shall be carried forward for deduction after the 16th taxable year
11 succeeding the taxable year in which such credit initially was claimed, and
12 no carryforward shall be allowed for deduction in any succeeding taxable
13 year unless the taxpayer certifies under oath that the taxpayer continues to
14 meet the requirements of K.S.A. 74-50,131, and amendments thereto, and
15 this act. In no event shall any credit allowed under this section that expired
16 during any taxable year prior to the taxable year commencing January 1,
17 2011, be revived under the provisions of this act.

18 **(f) For projects placed into service on and after January 1, 2021,**
19 **a taxpayer may transfer up to 50% of the tax credit allowed under**
20 **subsection (e), as provided in this subsection. The taxpayer may make**
21 **a transfer to one or more transferees, but the total of all transfers shall**
22 **not exceed 50% of the taxpayer's tax credit. The taxpayer shall make**
23 **the transfer or transfers within a single tax year. The credit may be**
24 **transferred to any individual or entity and shall be claimed in the year**
25 **the credit was transferred against the transferee's tax liability for the**
26 **income tax under the Kansas income tax act or the premium tax or**
27 **privilege fees imposed pursuant to K.S.A. 40-252, and amendments**
28 **thereto, or the privilege tax as measured by the net income of financial**
29 **institutions imposed pursuant to article 11 of chapter 79 of the Kansas**
30 **Statutes Annotated, and amendments thereto. The amount of the**
31 **credit that exceeds the transferee's tax liability for such year may be**
32 **carried forward for credit in the succeeding taxable year or years until**
33 **the total amount of the tax credit is used, except that no such credit**
34 **shall be carried forward for deduction after the 16th taxable year**
35 **succeeding the taxable year in which such credit was initially claimed.**
36 **The taxpayer or transferee shall provide such documentation of the**
37 **tax credit transfer to the secretary of revenue as may be required by**
38 **the secretary.**

39 **(g) In the event the tax credit earned by the taxpayer and**
40 **transferred to a transferee is later disallowed in whole or in part by**
41 **the secretary of revenue, the taxpayer that originally earned the tax**
42 **credit shall be liable for repayment to the state in the amount**
43 **disallowed.**

1 **(h)** For tax years commencing after December 31, 2005, any taxpayer
2 claiming credits pursuant to this section, as a condition for claiming and
3 qualifying for such credits, shall provide information pursuant to K.S.A.
4 79-32,243, and amendments thereto, as part of the tax return in which such
5 credits are claimed. Such credits shall not be denied solely on the basis of
6 the contents of the information provided by the taxpayer pursuant to
7 K.S.A. 79-32,243, and amendments thereto.

8 ~~(g)~~**(i)** This section and K.S.A. 79-32,160b, and amendments thereto,
9 shall be *a* part of and supplemental to the job expansion and investment
10 credit act of 1976, and amendments thereto.

11 Sec. 3. K.S.A. 74-50,133 and 79-32,160a are hereby repealed.

12 Sec. 4. This act shall take effect and be in force from and after its
13 publication in the statute book.