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

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


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

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

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

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

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

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

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

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

(g) "NAICS" means the North American industry classification
system.

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

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

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

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

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

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

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

(i) Industry group 7132 or 8131;

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

(iii) subsector 722;

(B) which is a bioscience company, as defined in K.S.A. 2010 Supp.
74-99b33, and amendments thereto;

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

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

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

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

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

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

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

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

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

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

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

(b) Any qualified company, approved by the secretary for benefits pursuant to paragraph (a), that locates its business operation in a metropolitan county and will hire at least 10 new employees within two years from the date the qualified company enters into an agreement with
the secretary pursuant to K.S.A. 2010 Supp. 74-50,213, and amendments thereto, or any qualified company, approved by the secretary for benefits pursuant to paragraph (a), that locates its business operation in a non-metropolitan county and will hire at least five new employees within two years from the date the qualified company enters into an agreement with the secretary pursuant to K.S.A. 2010 Supp. 74-50,213, and amendments thereto, shall: (1) Be eligible to retain 95% of the qualified company's Kansas payroll withholding taxes for such all new employees being paid the county median wage or higher for a period of up to:

(A) Five years if the median or average wage paid to the new employees is equal to at least 100% of the county median wage;
(B) six years if the median or average wage paid to the new employees is equal to at least 110% of the county median wage;
(C) seven years if the median or average wage paid to the new employees is equal to at least 120% of the county median wage; or
(2) be eligible to retain 95% of the qualified company's Kansas payroll withholding taxes for such all new employees being paid the county median wage or higher for a period of up to five years if the median or average wage paid to the new employees is equal to at least 100% of the NAICS code industry average wage.

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

(1) Seven years if the median or average wage paid to the new employees is equal to at least 100% of the county median wage;
(2) eight years if the median or average wage paid to the new employees is equal to at least 110% of the county median wage;
(3) nine years if the median or average wage paid to the new employees is equal to at least 120% of the county median wage; or
(4) ten years if the median or average wage paid to the new employees is equal to at least 140% of the county median wage.

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

e) Effective January 1, 2012, any company, which meets the
criteria provided pursuant to the provisions of K.S.A. 74-50,211, and amendments thereto, that retains the employees of an existing business unit located in Kansas and enters into an agreement with the secretary pursuant to K.S.A. 2010 Supp. 74-50,213, and amendments thereto, shall be eligible to retain 95% of the qualified company's Kansas payroll withholding taxes for such employees for a period of up to five years.

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

(A) Whether the retention of the company or its operations is important to the economic vitality of the state;
(B) the area where such company or operations is located; or
(C) whether the retention of the company or its operations is important to a particular industry in the state due to any number of factors including, but not limited to, the quantity, quality or wages of the retained jobs involved.

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

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

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

Sec. 4. K.S.A. 2010 Supp. 74-50,213 is hereby amended to read as follows: 74-50,213. (a) Any qualified company meeting the requirements
of K.S.A. 2010 Supp. 74-50,212, and amendments thereto, may apply to
the secretary for benefits under this act. The application shall be
submitted on a form and in a manner prescribed by the secretary, and
shall include: (1) Evidence that the applicant is a qualified company; and
(2) evidence that the applicant meets the requirements of K.S.A. 2010
Supp. 74-50,212, and amendments thereto.

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

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

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

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

(f) A qualified company seeking benefits shall be allowed to
participate in the IMPACT program pursuant to K.S.A. 74-50,102 et seq.,
and amendments thereto, but shall not be allowed to participate in any
other program in which any portion of such qualified company's Kansas
payroll withholding taxes have been pledged to finance indebtedness or
transferred to or for the benefit of such company. A qualified company
shall not be allowed to claim any credits under K.S.A. 79-32,153, 79-32,160a or 79-32,182b, and amendments thereto, if such credits would otherwise be earned for the hiring of new employees and the qualified company has retained any Kansas payroll withholding taxes from wages of such employees. A qualified company shall not be eligible to receive benefits under K.S.A. 2010 Supp. 74-50,212, and amendments thereto, and under K.S.A. 74-50,102 et seq., and amendments thereto, for the same new employees.

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

(b) The secretary shall adopt rules and regulations necessary to implement and administer the provisions of this act.

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

(b) Business income attributable to the business activities conducted at the business facility, office, department or other operation relocated to Kansas of a qualified company which qualified for benefits under the provisions of subsection (a)(1) of K.S.A. 74-50,212, and amendments thereto, shall be determined by multiplying the business income of the company apportioned to this state by a fraction, the numerator of which is the property factor plus the payroll factor plus the sales factor, and the denominator of which is three. For purposes of this subsection, the
property factor is a fraction, the numerator of which is the average value of the company's real and tangible personal property owned or rented and used during the tax period at such relocated facility, office, department or other relocated operation in Kansas, and the denominator of which is the average value of the company's real and tangible personal property owned or rented and used within this state during the tax period. The payroll factor is a fraction, the numerator of which is the total amount paid during the tax period by the company for compensation at such relocated facility, office, department or other relocated operation in Kansas, and the denominator of which is the total compensation paid by the company in this state during the tax period. The sales factor is a fraction, the numerator of which is the total sales of the relocated facility, office, department or other relocated operation in this state during the tax period, and the denominator of which is the total sales of the company in this state during the tax period.

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


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