

SENATE BILL No. 281

AN ACT enacting the economic revitalization and reinvestment act; relating to the secretary of commerce and Kansas development finance authority; authorizing the issuance of bonds for certain economic development purposes; amending K.S.A. 74-8017 and repealing the existing section.

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

New Section 1. (a) The provisions of this section shall be known and may be cited as the “economic revitalization and reinvestment act.”

(b) The purpose of the economic revitalization and reinvestment act is to foster Kansas employment by encouraging product development and engineering leading to new manufactured products in Kansas.

(c) As used in this act:

(1) “Base eligibility period” means the three taxable years immediately preceding the date of application for benefits under this act.

(2) “Eligible business” means a person, corporation, partnership or other entity doing business in Kansas that satisfies conditions imposed by the secretary, which may include, among other conditions, that the person, corporation, partnership or other entity:

(A) Paid at least \$600,000,000 in average annual gross Kansas compensation, according to reports filed with the secretary of human resources, during the base eligibility period; and

(B) paid at least \$50,000 of average annual gross compensation per Kansas employee during the base eligibility period; and

(C) has invested at least \$1,000,000,000 in real and tangible personal property located within and currently used in the operation of a business in Kansas; and

(D) is described by north American industrial classification system as being in the manufacturing sector.

(3) “Eligible project” means a research, development, engineering or manufacturing project (A) undertaken by an eligible business relating to the development of a new or improved business component or product and may include, but not be limited to, product development and design, applied research, manufacturing, improvement, replacement or acquisition of real or personal property and modernization and retooling of existing property in Kansas, (B) for which the eligible business proposes to invest not less than \$500,000,000 in Kansas in direct connection with the eligible project of not less than \$500,000,000 in Kansas and (C) for which the eligible business proposes to employ up to 4,000 full-time employees in Kansas, as defined in K.S.A. 74-50,114 and amendments thereto.

(4) “Gross compensation” means gross wages and benefits paid to or on behalf of employees receiving wages.

(5) “Secretary” means the secretary of commerce and housing.

(d) A person, corporation, partnership or other entity proposing to undertake an eligible project may apply to the secretary to enter into an agreement for benefits under this act. The application shall include (1) evidence that the applicant is an “eligible business” as defined in subsection (c)(2) and (2) a detailed description of the eligible project.

(e) Upon receipt of an application described in subsection (d), if the secretary finds that the application is from an eligible business and that the project constitutes an eligible project, the secretary may enter into an agreement with the eligible business for benefits under this act. Such agreement for benefits shall be subject to review and approval of the state finance council created by K.S.A. 75-3708, and amendments thereto. The agreement shall commit the secretary to request that the Kansas development finance authority issue bonds pursuant to the Kansas development finance authority act, K.S.A. 74-8901, *et seq.* to finance the eligible project for the benefit of the eligible business in an aggregate principal amount not to exceed \$500,000,000, plus costs of issuance, costs of credit enhancement, reserve funds and capitalized interest, and shall commit the eligible business to pay the principal of and interest on such obligations, except that during the period from the issuance of such bonds through the maturity of such obligations but not to exceed 20 years revenue realized from withholding upon Kansas wages paid by the eligible business pursuant to K.S.A. 79-3294 *et seq.* and amendments thereto, with respect to the eligible project which is necessary to pay the interest on such obligations shall be credited to the special economic revitalization fund created in subsection (h), and shall be transferred by the state treasurer to pay interest on such obligations as provided by law. The agree-

ment shall further specifically provide that if the revenue from the withholding upon Kansas wages is insufficient to pay interest on the bonds, the eligible business shall remain obligated to make such payments. The terms and conditions with respect to the obligations shall be set forth in the agreement or in the financing documents relating to the issuance of the bonds. In the event the eligible business terminates, cancels or reduces the scope of the eligible project approved by the secretary, the agreement shall provide that with respect to debt service, the eligible business shall remain responsible for payment of the entire outstanding principal as well as any interest still outstanding, and no moneys remaining in the special economic revitalization fund shall be made available for the purpose of paying the remaining interest portion of the eligible business' debt service obligation.

(f) Income tax refunds and balances due resulting from withholding upon Kansas wages paid by the eligible business pursuant to K.S.A. 79-3294 *et seq.* and amendments thereto, with respect to the eligible project, shall be reconciled on at least an annual basis by a method defined in the agreement described in subsection (e).

(g) The Kansas development finance authority is hereby authorized to issue obligations, for the purpose of financing the eligible project provided in subsection (e), in a principal amount not to exceed the amount specified in subsection (e). The maximum maturity of bonds issued pursuant to this act shall be 20 years, unless the secretary shall find and determine that a maturity greater than 20 years, but in no event greater than 30 years, is necessary for economic feasibility of the eligible project of the eligible business.

(h) The state treasurer shall credit all revenue collected or received from withholding upon Kansas wages paid by a taxpayer which is an eligible business with respect to an eligible project, as certified by the secretary, to the special economic revitalization fund, which fund is hereby created in the custody of the state treasurer but shall not be a part of the state general fund. Distributions from the special economic revitalization fund shall be used to pay interest on the bonds as authorized pursuant to this act and shall not be subject to appropriation. On or before the 10th day of each month, the director of accounts and reports shall transfer from the state general fund to the special economic revitalization fund interest earnings based on: (1) The average daily balance of moneys in the special economic revitalization fund for the preceding month; and (2) the net earnings rate of the pooled money investment portfolio for the preceding month. The provisions of this section shall expire when all interest on obligations issued for the purpose of financing all or a portion of the costs of an eligible project has been paid. Moneys credited to the special economic revitalization fund in accordance with the foregoing provisions shall be distributed to or on the order of the Kansas development finance authority to pay interest on bonds issued to finance an eligible project. The state treasurer shall make such distributions on such dates as mutually agreed to by the Kansas development finance authority, the paying agent for such obligations and the state treasurer. The total of all distributions under this section shall not exceed an amount determined to be sufficient to pay the interest on such bonds.

(i) The eligible business shall not be allowed to participate in the IMPACT act or program pursuant to K.S.A. 74-50,102 *et seq.* and amendments thereto, with respect to the eligible project. The secretary may include provisions in the agreement described in subsection (e) to limit or reduce the amount of eligible credits, including but not limited to those allowed pursuant to K.S.A. 79-32,160a, 79-32,182b or 79-32,206 and amendments thereto, on the investment of the proceeds of the bonds issued under this act. Nothing in this subsection shall be construed to prohibit the eligible business from receiving credits allowed by law for any investment not related to bonds issued pursuant to this section.

(j) All hiring and use of the employees described in subsection (c)(3)(C) by an eligible business in connection with an eligible project, shall be subject to post audit under the legislative post audit act, and amendments thereto. All audit expenses incurred shall be charged to and paid by such eligible business. All moneys received for such audit expenses shall be deposited in the state treasury and credited to the audit services fund of the division of post audit. The division of post audit is hereby authorized to conduct the audit work authorized by this section

in accordance with the provisions of the legislative post audit act, and amendments thereto.

(k) Bonds issued under this section shall not be used to provide for or to increase compensation packages, rewards, bonuses, pensions, enhanced retirement, stock options, buyouts or substantial severance pay or other financial benefits to any chief executive officer, chief financial officer or any officers of the company.

(l) The agreement described in subsection (e) shall include a provision requiring the eligible business to agree that (1) the eligible business shall be subject to post audit under the legislative post audit act, and amendments thereto, (2) the eligible business shall pay audit expenses and (3) the eligible business shall not limit access to information required under the legislative post audit act, and amendments thereto.

(m) No new eligible project shall be approved for financing under the provisions of this section on or after July 1, 2005.

Sec. 2. K.S.A. 74-8017 is hereby amended to read as follows: 74-8017. On and after January 1, 2003, it shall be the duty of Kansas, Inc. to prepare an annual report evaluating the cost effectiveness of the various income tax credits and sales tax exemptions enacted to encourage economic development within this state and submit the same to the standing committees on taxation and economic development of the house and assessment and taxation and commerce of the senate at the beginning of each regular session of the legislature. The secretary of revenue, in consultation with the president of Kansas, Inc., shall develop a questionnaire on the utilization of state income tax credits and sales tax exemptions that shall be completed by all corporate taxpayers *that: (1) Are subject to state income tax and (2) utilize any of the state income tax credits and exemptions described in subsections (a) through (i) below* that shall be submitted to the department of revenue concurrently with the filing of an annual corporate income tax return. The secretary shall provide the completed questionnaires to Kansas, Inc. for use in the preparation of such annual report. The questionnaire shall require respondents to indicate utilization of the following credits and exemptions:

(a) Income tax credits authorized under the provisions of the job expansion and investment credit act of 1976 and acts amendatory thereof and supplemental thereto;

(b) income tax credits for expenditures in research and development activities authorized by K.S.A. 79-32,182, and amendments thereto;

(c) income and financial institutions privilege tax credits for cash investment in stock of Kansas Venture Capital, Inc. authorized by K.S.A. 74-8205 and 74-8206, and amendments thereto;

(d) income tax credits for cash investment in certified Kansas venture capital companies authorized by K.S.A. 74-8304, and amendments thereto;

(e) income tax credits for cash investment in certified local seed capital pools authorized by K.S.A. 74-8401, and amendments thereto;

(f) income tax credits for investment in the training and education of qualified firms' employees authorized by K.S.A. 74-50,132, and amendments thereto;

(g) sales tax exemptions for property or services purchased for the purpose of and in conjunction with constructing, reconstructing, enlarging or remodeling a business, or retail business meeting the requirements of K.S.A. 74-50,115, and amendments thereto, and machinery and equipment for installation at such business or retail business authorized by subsection (cc) of K.S.A. 79-3606, and amendments thereto; ~~and~~

(h) sales tax exemptions for machinery and equipment used directly and primarily for the purposes of manufacturing, assembling, processing, finishing, storing, warehousing or distributing articles of tangible personal property in this state intended for resale by a manufacturing or processing plant or facility or a storage, warehousing or distribution facility. The secretary of revenue shall provide the completed questionnaires and copies of sales tax exemption certificates to Kansas, Inc. for the preparation of such report; *and*

(i) *distribution from the special economic revitalization fund pursuant to the provisions of the economic revitalization reinvestment act, section 1, and amendments thereto.*

Sec. 3. K.S.A. 74-8017 is hereby repealed.

Sec. 4. This act shall take effect and be in force from and after its publication in the Kansas register.

I hereby certify that the above BILL originated in the SENATE, and passed that body

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SENATE concurred in  
HOUSE amendments \_\_\_\_\_

\_\_\_\_\_  
*President of the Senate.*

\_\_\_\_\_  
*Secretary of the Senate.*

Passed the HOUSE  
as amended \_\_\_\_\_

\_\_\_\_\_  
*Speaker of the House.*

\_\_\_\_\_  
*Chief Clerk of the House.*

APPROVED \_\_\_\_\_

\_\_\_\_\_  
*Governor.*