

HOUSE BILL No. 2821

By Representative Swenson

2-11

9 AN ACT concerning economic development; relating to recapture of de-
10 velopment subsidy values.

11

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

13 Section 1. This act shall be known and may be cited as the economic
14 development and corporate accountability act.

15 Sec. 2. As used in this act unless the context clearly shows otherwise:

16 (a) "Corporate parent" means any person, association, corporation,
17 joint venture, partnership or other entity, that owns or controls 50% or
18 more of a recipient corporation.

19 (b) "Date of subsidy" means the date that a granting body provides
20 the initial monetary value of a development subsidy to a recipient cor-
21 poration. If the subsidy is for the installation of new equipment, such date
22 shall be the date the corporation puts the equipment into service. If the
23 subsidy is for improvements to property, such date shall be the date the
24 improvements are finished, or the date the corporation occupies the prop-
25 erty, whichever is earlier.

26 (c) "Development subsidy" means any expenditure of public funds
27 with a value of at least \$25,000, for the purpose of stimulating economic
28 development within the state, including, but not limited to, bonds, grants,
29 loans, loan guarantees, enterprise zones, empowerment zones, tax incre-
30 ment financing, grants, fee waivers, land price subsidies, matching funds,
31 tax abatements, tax exemptions and tax credits.

32 (d) "Full-time job" means a job in which an individual is employed
33 by a recipient corporation for at least 35 hours or more per week.

34 (e) "Granting body" means any agency, board, office, public entity or
35 authority of the state or local government unit that provides a develop-
36 ment subsidy.

37 (f) "Local government unit" means an agency, board, commission,
38 office, public entity or public authority of a political subdivision of the
39 state.

40 (g) "Part-time job" means a job in which an individual is employed
41 by a recipient corporation for less than 35 hours per week.

42 (h) "Project site" means the site of a project for which any develop-
43 ment subsidy is provided.

- 1 (i) "Property-taxing entity" means any entity which levies taxes upon
2 real or personal property.
- 3 (j) "Recipient corporation" means any person, association, corpora-
4 tion, joint venture, partnership or other entity that receives a development
5 subsidy.
- 6 (k) "Small business" means a corporation whose corporate parent,
7 and all subsidiaries thereof, employed fewer than 20 full-time employees,
8 or had a total gross receipts of less than \$1 million during the previous
9 calendar year.
- 10 (l) "State" means the state of Kansas and its agencies, boards, com-
11 missions, office, instrumentalities, political subdivisions, public benefit
12 authorities and other public entities of the state.
- 13 (m) "Subsidy value" means the face value of any and all development
14 incentives provided to a recipient corporation.
- 15 (n) "Temporary job" means a job in which an individual is hired for
16 a season, or for a limited period of time.
- 17 Sec. 3. The department of commerce shall submit an annual report
18 to the legislature at the beginning of each legislative session. The report
19 shall present all the types of subsidies and incentives granted for economic
20 development during the prior fiscal year, including, but not limited to:
- 21 (a) The amount of uncollected state tax revenues resulting from every
22 corporate tax credit, abatement, exemption and reduction provided by
23 the state or local governmental unit including, but not limited to, gross
24 receipts, income, sales, use, raw materials, excise, property, utility and
25 inventory taxes.
- 26 (b) The name of each corporate taxpayer which claimed any tax
27 credit, abatement, exemption or reduction with a value of \$5,000 or more,
28 together with the dollar amount received by each such corporation.
- 29 (c) Any tax credit, abatement, exemption or reduction received by a
30 corporation of less than \$5,000 each shall not be itemized. The depart-
31 ment of commerce shall report an aggregate dollar amount of such ex-
32 penditures and the number of companies so aggregated for each tax
33 expenditure.
- 34 (d) All state appropriated expenditures for economic development,
35 including line-item budgets for every state-funded entity concerned with
36 economic development.
- 37 Sec. 4. (a) Each property-taxing entity shall annually submit a report
38 to the department of commerce and the department of revenue regarding
39 any real property in the entity's jurisdiction that has received a property
40 tax abatement or reduction during the fiscal year. The report shall contain
41 information including, but not limited to: The name of the property
42 owner; the address of the property; the start and end dates of the property
43 tax reduction or abatement; the schedule of the tax reduction; each tax

1 abatement, reduction and exemption for the property; and the amount
2 of property tax revenue not paid to the taxing entity as a result of the
3 reduction or abatement.

4 (b) Each property-taxing entity shall also submit to the department
5 of commerce and the department of revenue a report setting forth the
6 total property tax revenue not paid during the fiscal year as a result of all
7 property tax reductions and abatements in the entity's jurisdiction.

8 (c) The department of commerce shall annually compile and publish
9 all of the data contained in the reports required under paragraphs (a) and
10 (b) in both written and electronic form, including publication on the de-
11 partment's website.

12 (d) If a property-taxing entity fails to submit the required reports to
13 the department of commerce and the department of revenue within the
14 prescribed time, the department of commerce shall withhold further pay-
15 ments of any development subsidy to the delinquent entity until the entity
16 files its reports with the departments.

17 Sec. 5. (a) A development subsidy applicant shall complete an ap-
18 plication for the subsidy on a form prepared by the department of com-
19 merce. The information required on the application shall include the
20 following:

21 (1) An application tracking number provided by the granting agency
22 for the project.

23 (2) The name, street, mailing address and phone number of the chief
24 officer of the granting body provided by the granting agency.

25 (3) The name, street, mailing address and phone number of the chief
26 officer of the applicant's corporate parent.

27 (4) The name, street, mailing address and phone number of the chief
28 officer of the applicant.

29 (5) The street address of the project site.

30 (6) The three-digit North American industry classification system
31 number of the project site.

32 (7) The total number of individuals employed by the applicant at the
33 project site on the date of the application, broken down by full-time, part-
34 time and temporary positions.

35 (8) The total number of individuals employed in the state by the
36 applicant's corporate parent, and all subsidiaries thereof, as of December
37 31 of the prior fiscal year, broken down by full-time, part-time and tem-
38 porary positions.

39 (9) The development subsidy or subsidies being applied for with the
40 granting body, and the value of such subsidy or subsidies.

41 (10) The number of new jobs to be created by the applicant at the
42 project site, broken down by full-time, part-time and temporary positions.

43 (11) The average hourly wage to be paid to all current and new em-

1 ployees at the project site, broken down by full-time, part-time and tem-
2 porary positions, and further broken down by wage groups as follows:
3 \$6.00 or less an hour, \$6.01 to \$7.00 an hour, \$7.01 to \$8.00 an hour,
4 \$8.01 to \$9.00 an hour, \$9.01 to \$10.00 an hour, \$10.01 to \$11.00 an
5 hour, \$11.01 to \$12.00 an hour, \$12.01 to \$13.00 an hour, \$13.01 to
6 \$14.00 an hour and \$14.01 or more per hour.

7 (12) For project sites located in a metropolitan statistical area, as de-
8 fined by the federal office of management and budget, the average hourly
9 wage paid to non-managerial employees in the state for the industries
10 involved at the project, as established by the federal bureau of labor
11 statistics.

12 (13) For project sites located outside of metropolitan statistical areas,
13 the average weekly wage paid to non-managerial employees in the county
14 for industries involved at the project, as established by the federal de-
15 partment of commerce.

16 (14) The type and amount of health care coverage to be provided by
17 the applicant within 90 days of commencement of employment at the
18 project site, including any costs to be borne by the employees.

19 (15) A list of all development subsidies that the applicant is request-
20 ing, and the name of any other granting body from which such subsidies
21 are sought.

22 (16) A statement as to whether the development subsidy may reduce
23 employment at any other site controlled by the applicant or its corporate
24 parent, within or without of the state, resulting from automation, merger,
25 acquisition, corporate restructuring or other business activity.

26 (17) A statement as to whether or not the project involves the relo-
27 cation of work from another address and if so, the number of full-time,
28 part-time and temporary jobs to be relocated, and the address from which
29 they are to be relocated.

30 (18) A certification by the chief officer of the applicant as to the
31 accuracy of the application.

32 (b) If the granting body approves the application, it shall send a copy
33 to the department of commerce within 15 days of such approval. If the
34 application is not approved, the granting body shall retain the application
35 in its records.

36 Sec. 6. (a) Each granting body shall file a progress report with the
37 department of commerce for each project for which a development sub-
38 sidy has been granted, no later than December 1 each year. The report
39 shall include the following information:

40 (1) The application tracking number.

41 (2) The name, street and mailing address, phone number and chief
42 officer of the granting body.

43 (3) The name, street and mailing address, phone number and chief

1 officer of the recipient corporation.

2 (4) A summary of the number of jobs required, created and lost,
3 broken down by full-time, part-time and temporary positions, and by
4 wage groups as defined in subsection (a)(11) of section 5, and amend-
5 ments thereto.

6 (5) The type and amount of health care coverage provided to the
7 employees at the project site, including any costs borne by the employees.

8 (6) The comparison of the total employment in the state by the re-
9 cipient's corporate parent on the date of the application and the date of
10 the report, broken down by full-time, part-time and temporary positions.

11 (7) A statement as to whether the use of the development subsidy
12 during the previous fiscal year reduced employment at any other site
13 controlled by the recipient corporation or its corporate parent, within or
14 outside of the state as a result of automation, merger, acquisition, cor-
15 porate restructuring or other business activity.

16 (8) A signed certification by the chief officer of the recipient corpo-
17 ration as to the accuracy of the progress report.

18 (b) On all subsequent annual progress reports, the granting body shall
19 indicate whether the recipient corporation is still in compliance with its
20 job creation, wage and benefit goals, and whether the corporate parent
21 is still in compliance with its state employment requirement.

22 (c) Granting bodies and recipient corporations shall file annual pro-
23 gress reports for the duration of the subsidy or not less than five years,
24 whichever period is greater.

25 Sec. 7. (a) No later than 15 days after the second anniversary of the
26 date of subsidy, the granting body shall file a two-year progress report
27 with the department of commerce, and include the same information as
28 required under section 6, and amendments thereto. The recipient cor-
29 poration shall certify as to the accuracy of such report.

30 (b) The granting body shall state in the two-year report whether the
31 recipient corporation has achieved its job creation, wage and benefit goals,
32 and whether the corporate parent has maintained 90% of its employment
33 in the state.

34 (c) The department of commerce shall compile and publish all data
35 from the progress reports in both written and electronic form, including
36 publication on the department's website.

37 (d) The granting body and the department of commerce shall have
38 access at all reasonable times to the project site and the records of the
39 recipient corporation in order to monitor the project and to prepare pro-
40 gress reports.

41 (e) A recipient corporation that fails to provide the granting body with
42 the information or access required under this section shall be subject to
43 a fine of not less than \$500 per day to commence within 10 working days

1 after the December 1 deadline, and of not less than \$1,000 per day to
2 commence 20 days after such deadline.

3 Sec. 8. (a) A granting body shall not award a development subsidy if
4 the cost per job is greater than \$35,000. Such cost shall be determined
5 by dividing the amount of the subsidy by the number of full-time jobs
6 required under the application approved by the granting body.

7 (b) A granting body shall not grant a subsidy to an applicant unless
8 the wages paid to employees at the project site are equal to or exceed
9 85% of the average wage as established under subsection (a)(11) of sec-
10 tion 5, and amendments thereto, provided that for small businesses the
11 average wage must equal or exceed 75% of the wages established there-
12 under. The computation of wages under this section shall only apply to a
13 recipient corporation that provides the health care coverage as approved
14 in its application by the granting body.

15 Sec. 9. (a) A recipient corporation shall fulfill its job creation, wage,
16 health care and other benefit requirements for the project site within two
17 years of the date of subsidy. Such recipient shall maintain its wage and
18 benefit goals as long as the subsidy is in effect, or five years, whichever
19 is longer.

20 (b) The corporate parent of a recipient corporation must maintain at
21 least 90% of its employment in the state as long as the development
22 subsidy is in effect, or not less than five years, whichever is longer.

23 (c) If the requirements under paragraphs (a) or (b) are not fulfilled,
24 the granting body shall recapture the development subsidy from the re-
25 cipient corporation as follows:

26 (1) Upon a failure by the recipient corporation to create the required
27 number of jobs, or to pay the required wages or benefits, the amount
28 recaptured shall be based on the pro rata amount by which the unfulfilled
29 jobs, wages or benefits bear to the total amount of the development
30 subsidy.

31 (2) Upon a failure of the corporate parent to maintain 90% of its
32 employment in the state, the rate of recapture shall equal twice the per-
33 centage by which such employment is less than 90%.

34 (d) The granting body shall provide notice and explanation to the
35 recipient corporation of its intent to recapture the development subsidy
36 and state the amount to be recaptured. The recipient corporation shall
37 remit to the governing body such amount within 60 calendar days of the
38 date of such notice.

39 (e) If a recipient corporation defaults on a development subsidy in
40 three consecutive calendar years, the granting body shall declare the sub-
41 sidy null and void, and shall so notify the department of commerce and
42 the recipient corporation. The recipient corporation shall pay back to the
43 granting body all remaining value of the development subsidy it has not

1 previously repaid within 180 calendar days of the date of the notice of
2 such default.

3 Sec. 10. (a) If a granting body fails to enforce any provision of this
4 act, any individual who paid personal income taxes to the state in the
5 calendar year prior to the year in dispute, or any organization representing
6 such taxpayers, shall be entitled to bring a civil action in state court to
7 compel enforcement under this statute. The court shall award reasonable
8 attorney's fees and costs to such prevailing taxpayer or organization.

9 (b) All records required to be prepared or maintained under this act,
10 including, but not limited to, applications, progress reports, recapture
11 notices and any other records or proceedings relating thereto, shall be
12 subject to disclosure under the state's open records act, K.S.A. 45-215 *et*
13 *seq.*, and amendments thereto.

14 (c) Nothing in this section shall be construed to require or authorize
15 a recipient corporation to reduce wages established by any collective bar-
16 gaining agreement or state or federal prevailing wage laws.

17 Sec. 11. The provisions of this act shall be severable, and if any
18 phrase, clause, sentence or provision is declared to be invalid or is pre-
19 empted by federal law or regulation, the validity of the remainder of this
20 act shall not be affected.

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