

SENATE Substitute for HOUSE BILL No. 2540

AN ACT concerning disaster emergencies; relating to certain severe weather-related disasters and the state emergency fund; establishing a business restoration assistance program for certain counties; providing certain sales tax exemptions; prescribing certain powers, duties and functions; amending K.S.A. 2006 Supp. 75-3712 and repealing the existing section.

WHEREAS, On May 4, 2007, a disaster of severe weather, which included a storm of tornadoes, hail, high winds and flooding, struck the State of Kansas and particularly the counties of Kiowa, Barton, Stafford, Pratt, Edwards and Phillips, causing loss of life, personal injury and severe damage to local governments, businesses and homes; and

WHEREAS, Governor Kathleen Sebelius pursuant to K.S.A. 48-924 declared by proclamation on May 4, 2007, a state of disaster emergency for the counties of Kiowa, Barton, Stafford, Pratt, Edwards and Phillips as a result of the May 4, 2007, disaster; and

WHEREAS, The tornado which struck the town of Greensburg, the county seat of Kiowa County, was the first tornado for which the highest of the six categories (0 to 5) of the new Enhanced Fujita scale (EF5) was used; this is the scale for rating the strength of tornadoes in the United States estimated through the damage caused; and

WHEREAS, A tornado measured at the EF5 level of severity is characterized by wind speed in excess of 200 miles per hour and is expected to result in incredible destruction including strong frame houses leveled off at foundations and swept away; automobile-sized missiles fly through the air in excess of 100 m (109 yd), and high-rise buildings will have significant structural deformation; and

WHEREAS, The tornado which struck Greensburg, Kansas, was distinctly remarkable in that the damage and destruction resulted in the complete devastation of county and city governmental facilities and in the interruption of all government services in the area: Now, therefore,

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

New Section 1. (a) There is hereby established the county business restoration assistance program which shall be implemented and administered by the secretary of revenue in accordance with this section. The program is established for the purpose of assisting businesses that were in operation in a county which was struck by the tornado and other severe weather in Kansas on May 4, 2007, which had damage and destruction to governmental buildings and facilities to the extent that there was a complete interruption of all governmental services provided by a major town and the county government, and which suffered a major loss of the property tax base for the county of 25% or more, and that were damaged by such tornado and other severe storms on May 4, 2007, to rebuild business facilities, to acquire business machinery and equipment, and to reestablish jobs in such county for such businesses.

(b) The assistance payments under the program shall be available only for qualifying businesses as defined by this section. The program shall provide investment assistance payments and job restoration assistance payments that are applied for during the period commencing on the effective date of this act through June 30, 2008.

(c) Each investment assistance payment shall be an amount of not more than 10% of a qualifying investment made to rebuild or replace the building or structure or to replace the business machinery and equipment in the county. In accordance with policies adopted by the secretary of revenue, the investment assistance payment shall be for the purpose of assisting the business recover from the damage sustained from the storm on May 4, 2007. To be a qualifying investment under this program, the investment must be made between May 4, 2007, and June 30, 2008.

(d) Each job restoration assistance payment shall be an amount of not more than \$3,500 per full-time-equivalent job for an employee the applicant business hires back in the county. In accordance with policies adopted by the secretary of revenue, the job restoration assistance payment shall be for the purpose of assisting the business recover from the damages sustained from the storm on May 4, 2007.

(e) As used in this section:

(1) "Business facility" means a building or structure used in business operations located within the county;

(2) "business machinery and equipment" means the real and tangible personal property permanently and physically located at a business facility

and used in the business operations and shall not include (A) mobile equipment, such as motor vehicles, or (B) any items held for sale, such as business inventory;

(3) “qualifying business” means a business that was in existence and in operation providing goods or services within a county, which was struck by the tornado and other severe weather in Kansas on May 4, 2007, which had damage and destruction to governmental buildings and facilities to the extent that there was a complete interruption of all governmental services provided by a major town and the county government, and which suffered a major loss of the property tax base for the county of 25% or more, and that was damaged by the tornado and other severe storms that struck Kansas on May 4, 2007; and

(4) “qualifying job” means a job with a qualifying business that was lost as a result of damage sustained by the tornado and other severe storms that struck Kansas on May 4, 2007, that is restored and filled by an employee hired back in the county between May 4, 2007, and June 30, 2008, and shall not include any part-time job that provides the employee with less than 20 hours per week of paid employment.

(f) In accordance with the provisions of this section, the secretary of revenue shall adopt policies and procedures for the implementation and administration of the county business restoration assistance program and shall present such information to the state finance council requesting approval to make expenditures from the state emergency fund for assistance payments under the program in accordance with the proposed implementation and administration of the program. Upon approval of the state finance council by the affirmative vote of the governor and by a majority vote of the legislative members of the state finance council, acting on this matter which is hereby characterized as a matter of legislative delegation and subject to the guidelines prescribed in subsection (c) of K.S.A. 75-3711c, and amendments thereto, and subject to the limitation that not more than \$5,000,000 may be approved by the state finance council to be expended from the state emergency fund for such payments, the director of the budget shall certify to the director of accounts and reports the amount approved by the state finance council for expenditure by the department of revenue for such assistance payments from the state emergency fund.

New Sec. 2. The following shall be exempt from the tax imposed under the Kansas retailers’ sales tax act: All sales of tangible personal property or services purchased for the purpose of and in conjunction with constructing, reconstructing, enlarging or remodeling a business facility that was previously located in Kiowa County, Kansas, prior to May 4, 2007, and that has been damaged or destroyed by tornado and other severe weather on May 4, 2007, and the sale and installation of machinery and equipment purchased for installation at any such business facility, including any fence, the purpose for which is to enclose land devoted to agricultural use. Any person constructing, reconstructing, remodeling or enlarging a business facility in Kiowa County, Kansas, who had leased such a facility to a business in Kiowa County, Kansas, prior to May 4, 2007, and that such business has been damaged or destroyed by tornado and other severe weather on May 4, 2007, and which such facility shall be leased in whole or in part, to a business that was previously located in Kiowa County, Kansas, prior to May 4, 2007, and that such business has been damaged by tornado and other severe weather on May 4, 2007, that would be eligible for a sales tax exemption hereunder if such business had constructed, reconstructed, enlarged or remodeled such facility or portion thereof itself shall be entitled to the sales tax exemption under the provisions of this section. When a person shall contract for the construction, reconstruction, enlargement or remodeling of any such business facility, such person shall obtain from the state prior to June 30, 2008, an exemption certificate for the project involved. The certificate shall be furnished to the contractor to purchase materials, machinery and equipment for incorporation in such project. The contractor shall furnish the number of such certificates to all suppliers from whom such purchases are made, and such suppliers shall execute invoices covering the same bearing the number of such certificate. Upon completion of the project the contractor shall furnish to the person that obtained the exemption certificate, a sworn statement, on a form to be provided by the director

of taxation, that all purchases so made were entitled to exemption under this subsection. All invoices shall be held by the contractor for a period of five years and shall be subject to audit by the director of taxation. Any contractor or any agent, employee or subcontractor thereof, who shall use or otherwise dispose of any materials, machinery or equipment purchased under such a certificate for any purpose other than that for which such a certificate is issued without the payment of the sales or compensating tax otherwise imposed thereon, shall be guilty of a misdemeanor and, upon conviction therefor, shall be subject to the penalties provided for in subsection (g) of K.S.A. 79-3615, and amendments thereto. The provisions of this section shall be part of and supplemental to the Kansas retailers' sales tax act.

New Sec. 3. In addition to the authority granted by subsection (a)(3) of K.S.A. 48-924, and amendments thereto, the state of disaster emergency which was declared by the governor pursuant to K.S.A. 48-924 by proclamation on May 4, 2007, for the counties of Kiowa, Barton, Stafford, Pratt, Edwards and Phillips as a result of the May 4, 2007, severe weather-related disaster in such counties, which was extended and continued in existence by the finance council on May 16, 2007, for the counties of Kiowa, Barton, Stafford, Pratt, Edwards and Phillips for an additional 30 days through June 18, 2007, and which was ratified and continued in effect for the county of Kiowa by the house concurrent resolution adopted by the house of representatives, the senate concurring therein, on May 22, 2007, for an additional period ending on October 31, 2007, may be further extended and continued in existence for the county of Kiowa for one or more additional periods after October 31, 2007, by the state finance council, by unanimous vote of all of the members of the council, acting on this matter which is hereby declared to be a matter of legislative delegation and subject to the guidelines prescribed by subsection (c) of K.S.A. 75-3711c, and amendments thereto, except that such state of disaster emergency for the county of Kiowa shall not be extended and continued in effect after January 14, 2008.

Sec. 4. K.S.A. 2006 Supp. 75-3712 is hereby amended to read as follows: 75-3712. (a) The state emergency fund is hereby continued in the state treasury for the use of the state finance council created by K.S.A. 75-3708 and amendments thereto for the purposes and within the limitations prescribed by K.S.A. 75-3713, 75-3713a, 75-3713b, 75-3713c, 75-3713d ~~and~~, 75-3714 *and section 1*, and amendments thereto.

(b) (1) Upon certification by the director of the budget to the director of accounts and reports that the unencumbered balance in the state emergency fund is insufficient to pay an amount that is necessary to finance an action approved by the state finance council pursuant to K.S.A. 75-3713, 75-3713a, 75-3713b, 75-3713c ~~or~~, 75-3713d *or section 1*, and amendments thereto, the director of accounts and reports shall transfer an amount equal to the insufficient amount from the state general fund to the state emergency fund, ~~except that~~. The total of all amounts transferred *from the state general fund to the state emergency fund* pursuant to this subsection (b)(1) during any fiscal year shall not exceed \$10,000,000, *excluding all amounts transferred from the state general fund pursuant to subsection (b)(2).*

(2) *In addition to the provisions of subsection (b)(1), during the period commencing on the effective date of this act until January 14, 2008, notwithstanding the provisions of any other statute to the contrary:*

(A) *The director of the budget shall provide (i) notice to the state finance council that the unencumbered balance in the state emergency fund is insufficient to pay an amount that is necessary to finance an action approved by the state finance council pursuant to K.S.A. 75-3713, 75-3713a, 75-3713b, or section 1, and amendments thereto, which is directly related to a severe weather-related state of disaster emergency declared by the governor pursuant to K.S.A. 48-924, and amendments thereto, and (ii) the director of the budget shall include with such notice the director's recommendations regarding a specific amount or amounts, which in the aggregate are equal to the insufficient amount, and which could be transferred to the state emergency fund for such purpose from the state general fund or any special revenue fund or funds, or any account or accounts of the state general fund or any such special revenue fund or funds; and*

(B) *upon approval such recommendation or any modification thereof*

by the state finance council, by unanimous vote of all of the members of the council, acting on this matter which is hereby characterized as a matter of legislative delegation and subject to the guidelines prescribed in subsection (c) of K.S.A. 75-3711c, and amendments thereto, the director of the budget shall certify to the director of accounts and reports such recommendation, including any modifications, as approved by the state finance council; and

(C) upon receipt of such certification by the director of the budget, the director of accounts and reports shall transfer the amount or amounts specified in such certification from the state general fund or any special revenue fund or funds, or any account or accounts of the state general fund or any such special revenue fund or funds, to the state emergency fund, except that the total of all amounts transferred to the state emergency fund pursuant to this subsection (b)(2) during the period commencing on the effective date of this act until January 14, 2008, shall not exceed \$25,000,000.

Sec. 5. K.S.A. 2006 Supp. 75-3712 is hereby repealed.

Sec. 6. 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 HOUSE, and passed that body

HOUSE concurred in
SENATE amendments _____

Speaker of the House.

Chief Clerk of the House.

Passed the SENATE
as amended _____

President of the Senate.

Secretary of the Senate.

APPROVED _____

Governor.