

SENATE BILL No. 210

By Senators Hensley, Faust-Goudeau, Hawk, Holland and Pettey

2-11

1 AN ACT concerning employment; relating to employment requirements in
2 certain state contracts; employment requirements for certain tax
3 benefits; amending K.S.A. 2014 Supp. 12-17,166, 74-50,131, 74-
4 50,212, 79-32,154 and 79-32,243 and repealing the existing sections.
5

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

7 New Section 1. (a) As used in this section:

8 (1) "Division of purchasing" means the division of purchasing of the
9 department of administration.

10 (2) "Kansas worker" means any individual having a residence in
11 Kansas as determined by the employment records of such individual held
12 by the individual's employer.

13 (3) "State agency" means any state office or officer, department,
14 board, commission, institution or bureau, or any agency, division or unit
15 thereof.

16 (4) "State contract" means any agreement entered into on and after
17 January 1, 2016, by a state agency for the procurement of services with an
18 annual cost to the state agency of at least \$100,000, excluding lease
19 agreements, lease-purchase agreements and agreements entered into solely
20 for the acquisition of goods or commodities by the state agency.

21 (b) Any contractor entering into a state contract, including any
22 subcontractors contracted by such contractor to perform work required by
23 such state contract, shall employ a sufficient number of Kansas workers
24 such that at least 70% of the employees assigned by such contractor to
25 perform work under the state contract shall be Kansas workers. An
26 employee shall be considered assigned to perform work under the state
27 contract if the employee performs any work that is directly related to
28 fulfilling the contractor's obligations under the state contract regardless of
29 the proportion of such work to the employee's regular employment duties.

30 (c) All state agencies shall provide a copy of any state contract to the
31 division of purchasing for verification that the contractor is in compliance
32 with this section. A contractor subject to the requirements of this section
33 shall provide any personnel information to the division of purchasing as
34 required by the secretary of administration. The division of purchasing
35 shall determine if the contractor's employees are Kansas workers and
36 verify whether the contractor is in compliance with this section. The

1 division of purchasing shall submit a report to the state agency contracting
2 with the contractor stating whether the contractor is in compliance with
3 this section.

4 (d) A determination by the division of purchasing that a contractor is
5 not in compliance with this section is subject to review pursuant to the
6 Kansas administrative procedure act upon request by the contractor. Any
7 contractor aggrieved by the final decision under the Kansas administrative
8 procedure act may seek review of such decision under the Kansas judicial
9 review act.

10 (e) An employee who performs work under a state contract and is not
11 a Kansas worker may be exempt from the requirements of this section if
12 such employee provides expertise in a field necessary to fulfillment of the
13 contractor's contractual obligations, and such expertise cannot reasonably
14 be provided by a Kansas worker. A contractor may submit an application
15 to the division of purchasing for an exemption from this section for such
16 employees classified as experts. Such application shall include the name,
17 residence, position and job description of the employee, a detailed
18 explanation as to why such employee is an expert, a detailed explanation
19 as to why such expertise cannot reasonably be provided by a Kansas
20 worker, and such other information as required by the secretary of
21 administration. The division of purchasing shall determine whether such
22 employee shall be exempt from this section and shall include such
23 determination in its report to the state agency pursuant to subsection (c).

24 (f) The secretary of administration shall adopt such rules and
25 regulations as the secretary deems necessary to implement and enforce the
26 provisions of this section.

27 Sec. 2. K.S.A. 2014 Supp. 12-17,166 is hereby amended to read as
28 follows: 12-17,166. (a) One or more projects may be undertaken by a city
29 or county within an established STAR bond project district. Any city or
30 county proposing to undertake a STAR bond project, shall prepare a STAR
31 bond project plan in consultation with the planning commission of the city,
32 and in consultation with the planning commission of the county, if any, if
33 such project is located wholly outside the boundaries of the city. Any such
34 project plan may be implemented in separate development stages.

35 (b) Any city or county proposing to undertake a STAR bond project
36 within a STAR bond project district established pursuant to K.S.A. 2014
37 Supp. 12-17,165, and amendments thereto, shall prepare a feasibility
38 study. The feasibility study shall contain the following:

39 (1) Whether a STAR bond project's revenue and tax increment
40 revenue and other available revenues under K.S.A. 2014 Supp. 12-17,169,
41 and amendments thereto, are expected to exceed or be sufficient to pay for
42 the project costs;

43 (2) the effect, if any, a STAR bond project will have on any

1 outstanding special obligation bonds payable from the revenues described
2 in K.S.A. 2014 Supp. 12-17,169, and amendments thereto;

3 (3) a statement of how the jobs and taxes obtained from the STAR
4 bond project will contribute significantly to the economic development of
5 the state and region;

6 (4) visitation expectations;

7 (5) the unique quality of the project;

8 (6) economic impact study;

9 (7) market study;

10 (8) market impact study;

11 (9) integration and collaboration with other resources or businesses;

12 (10) the quality of service and experience provided, as measured
13 against national consumer standards for the specific target market;

14 (11) project accountability, measured according to best industry
15 practices;

16 (12) the expected return on state and local investment that the project
17 is anticipated to produce;

18 (13) a statement concerning whether a portion of the local sales and
19 use taxes are pledged to other uses and are unavailable as revenue for the
20 STAR bond project. If a portion of local sales and use taxes is so
21 committed, the applicant shall describe the following:

22 (A) The percentage of city and county sales and use taxes collected
23 that are so committed; and

24 (B) the date or dates on which the city and county sales and use taxes
25 pledged to other uses can be pledged for repayment of bonds; and

26 (14) an anticipated principal and interest payment schedule on the
27 bond issue.

28 The failure to include all information enumerated in this subsection in
29 the feasibility study for a STAR bond project shall not affect the validity of
30 bonds issued pursuant to this act.

31 (c) If the city or county determines the project is feasible, the project
32 plan shall include:

33 (1) A summary of the feasibility study done as defined in subsection
34 (b) of this section, and amendments thereto;

35 (2) a reference to the district plan established under K.S.A. 2014
36 Supp. 12-17,165, and amendments thereto, that identifies the project area
37 that is set forth in the project plan that is being considered;

38 (3) a description and map of the project area to be redeveloped;

39 (4) the relocation assistance plan as described in K.S.A. 2014 Supp.
40 12-17,172, and amendments thereto;

41 (5) a detailed description of the buildings and facilities proposed to be
42 constructed or improved in such area; and

43 (6) any other information the governing body of the city or county

1 deems necessary to advise the public of the intent of the project plan.

2 (d) A copy of the STAR bond project plan prepared by a city shall be
3 delivered to the board of county commissioners of the county and the
4 board of education of any school district levying taxes on property within
5 the STAR bond project area. A copy of the STAR bond project plan
6 prepared by a county shall be delivered to the board of education of any
7 school district levying taxes on property within the STAR bond project
8 area.

9 (e) Upon a finding by the planning commission that the STAR bond
10 project plan is consistent with the intent of the comprehensive plan for the
11 development of the city, and a finding by the planning commission of the
12 county, if any, with respect to a STAR bond project located wholly outside
13 the boundaries of the city, that the STAR bond project plan is consistent
14 with the intent of the comprehensive plan for the development of the
15 county, the governing body of the city or county shall adopt a resolution
16 stating that the city or county is considering the adoption of the STAR
17 bond project plan. Such resolution shall:

18 (1) Give notice that a public hearing will be held to consider the
19 adoption of the STAR bond project plan and fix the date, hour and place of
20 such public hearing;

21 (2) describe the boundaries of the STAR bond project district within
22 which the STAR bond project will be located and the date of establishment
23 of such district;

24 (3) describe the boundaries of the area proposed to be included within
25 the STAR bond project area; and

26 (4) state that the STAR bond project plan, including a summary of the
27 feasibility study, market study, relocation assistance plan and financial
28 guarantees of the prospective developer and a description and map of the
29 area to be redeveloped or developed are available for inspection during
30 regular office hours in the office of the city clerk or county clerk,
31 respectively.

32 (f) (1) The date fixed for the public hearing to consider the adoption
33 of the STAR bond project plan shall be not less than 30 nor more than 70
34 days following the date of the adoption of the resolution fixing the date of
35 the hearing.

36 (2) A copy of the city or county resolution providing for the public
37 hearing shall be by certified mail, return receipt requested, sent by the city
38 to the board of county commissioners of the county and by the city or
39 county to the board of education of any school district levying taxes on
40 property within the proposed STAR bond project area. Copies also shall be
41 sent by certified mail, return receipt requested to each owner and occupant
42 of land within the proposed STAR bond project area not more than 10 days
43 following the date of the adoption of the resolution. The resolution shall be

1 published once in the official city or county newspaper not less than one
2 week nor more than two weeks preceding the date fixed for the public
3 hearing. A sketch clearly delineating the area in sufficient detail to advise
4 the reader of the particular land proposed to be included within the STAR
5 bond project area shall be published with the resolution.

6 (3) At the public hearing, a representative of the city or county shall
7 present the city's or county's proposed STAR bond project plan. Following
8 the presentation of the STAR bond project area, all interested persons shall
9 be given an opportunity to be heard. The governing body for good cause
10 shown may recess such hearing to a time and date certain, which shall be
11 fixed in the presence of persons in attendance at the hearing.

12 (g) The public hearing records and feasibility study shall be subject to
13 the open records act, K.S.A. 45-215, and amendments thereto.

14 (h) Upon conclusion of the public hearing, the governing body may
15 adopt the STAR bond project plan by ordinance or resolution passed upon
16 a two-thirds vote of the members.

17 (i) After the adoption by the city or county governing body of a
18 STAR bond project plan, the clerk of the city or county shall transmit a
19 copy of the description of the land within the STAR bond project district, a
20 copy of the ordinance or resolution adopting the plan and a map or plat
21 indicating the boundaries of the district to the clerk, appraiser and treasurer
22 of the county in which the district is located and to the governing bodies of
23 the county and school district which levy taxes upon any property in the
24 district. Such documents shall be transmitted following the adoption or
25 modification of the plan or a revision of the plan on or before January 1 of
26 the year in which the increment is first allocated to the taxing subdivision.

27 (j) If the STAR bond project plan is approved, the feasibility study
28 shall be supplemented to include a copy of the minutes of the governing
29 body meetings of any city or county whose bonding authority will be
30 utilized in the STAR bond project, evidencing that a STAR bond project
31 plan has been created, discussed and adopted by the city or county in a
32 regularly scheduled open public meeting.

33 (k) Any substantial changes as defined in K.S.A. 2014 Supp. 12-
34 17,162, and amendments thereto, to the STAR bond project plan as
35 adopted shall be subject to a public hearing following publication of notice
36 thereof at least twice in the official city or county newspaper.

37 (l) Any STAR bond project shall be completed within 20 years from
38 the date of the approval of the STAR bond project plan. The maximum
39 maturity on bonds issued to finance projects pursuant to this act shall not
40 exceed 20 years.

41 ~~(m) (1) Kansas resident employees shall be given priority~~
42 ~~consideration for employment in construction projects located in a STAR~~
43 ~~bond project area. On and after January 1, 2016, any contractor, including~~

1 any subcontractors, contracted to perform work on a STAR bond project
2 shall employ a sufficient number of Kansas workers such that at least 70%
3 of the employees assigned by such contractor to perform such work shall
4 be Kansas workers. An employee shall be considered assigned to perform
5 such work if the employee performs any work that is directly related to
6 fulfilling the contractor's obligations with respect to the STAR bond
7 project regardless of the proportion of such work to the employee's regular
8 employment duties.

9 (2) All contractors subject to the provisions of this subsection shall
10 provide any personnel information to the department of commerce as
11 required by the secretary of commerce. The secretary shall notify the city
12 or county proposing the STAR bond project of any contractor that is not in
13 compliance with the provisions of this subsection. Upon such notification
14 the city or county shall either provide the contractor an opportunity to
15 cure the noncompliance within a reasonable time, or terminate the
16 contract with such contractor.

17 (3) For the purposes of this subsection, the term "Kansas worker"
18 shall have the same meaning ascribed thereto in section 1, and
19 amendments thereto.

20 (n) Any developer of a STAR bond project shall commence work on
21 the project within two years from the date of adoption of the STAR bond
22 project plan. Should the developer fail to commence work on the STAR
23 bond project within the two-year period, funding for such project shall
24 cease and the developer of such project or complex shall have one year to
25 appeal to the secretary for reapproval of such project and the funding for
26 it. Should the project be reapproved, the two-year period for
27 commencement shall apply.

28 Sec. 3. K.S.A. 2014 Supp. 74-50,131 is hereby amended to read as
29 follows: 74-50,131. Commencing after December 31, 1999: (a) As used in
30 this act: "Qualified firm" means a for-profit business establishment,
31 subject to state income, sales or property taxes, identified under the North
32 American industry classification system (NAICS) subsectors 221, 311 to
33 339, 423 to 425, 481 to 519, 521 to 721 and 811 to 928 or is identified as a
34 corporate or regional headquarters or back-office operation of a national or
35 multi-national corporation regardless of NAICS designation. The secretary
36 of commerce shall determine eligibility when a difference exists between a
37 firm's primary business activity and NAICS designation. A business
38 establishment may be assigned a NAICS designation according to the
39 primary business activity at a single physical location in the state.

40 (b) In the case of firms in NAICS subsectors 221, 423 to 425, 481 to
41 519, 521 to 721 and 811 to 928, the business establishment must also
42 demonstrate the following:

43 (1) More than $\frac{1}{2}$ of its gross revenues are a result of sales to

1 commercial or governmental customers outside the state of Kansas; or

2 (2) more than $\frac{1}{2}$ of its gross revenues are a result of sales to Kansas
3 manufacturing firms within NAICS subsectors 311 to 339; or

4 (3) more than $\frac{1}{2}$ of its gross revenues are a result of a combination of
5 sales described in (1) and (2).

6 (c) For purposes of determining whether one of the average wage
7 options described in subsection (d) below is satisfied, business
8 establishments located within a metropolitan county, as defined in K.S.A.
9 74-50,114, and amendments thereto, will be compared only to other
10 businesses within that metropolitan county, and business establishments
11 located outside of a metropolitan county will be compared to businesses
12 within an aggregation of counties representing the business establishment's
13 region of the state, which regional aggregation will exclude metropolitan
14 counties. Such aggregation shall be determined by the department of
15 commerce.

16 (d) Additionally, a business establishment having met the criteria as
17 established in subsection (a) or (b), and using the comparison method
18 described in subsection (c), must meet one of the following criteria:

19 (1) The establishment with 500 or fewer full-time equivalent
20 employees will provide an average wage that is above the average wage
21 paid by all firms with 500 or fewer full-time equivalent employees which
22 share the appropriate NAICS designation.

23 (2) The establishment with 500 or fewer full-time equivalent
24 employees is the sole firm within its appropriate NAICS designation
25 which has 500 or fewer full-time equivalent employees.

26 (3) The establishment with more than 500 full-time equivalent
27 employees will provide an average wage that is above the average wage
28 paid by firms with more than 500 full-time equivalent employees which
29 share the appropriate NAICS designation.

30 (4) The establishment with more than 500 full-time equivalent
31 employees is the sole firm within its appropriate NAICS designation
32 which has more than 500 full-time equivalent employees, in which event it
33 shall either provide an average wage that is above the average wage paid
34 by all firms with 500 or fewer full-time equivalent employees which share
35 the appropriate NAICS designation, or be the sole firm within its
36 appropriate NAICS designation.

37 (e) As an alternative to the requirements of subsections (c) and (d), a
38 firm having met the requirements of subsections (a) or (b), may qualify, if
39 excluding taxable disbursements to company owners, the business
40 establishment's annual average wage must be greater than or equal to 1.5
41 times the aggregate average wage paid by industries covered by the
42 employment security law based on data maintained by the secretary of
43 labor.

1 (f) For the purposes of this section, the number of full-time
2 equivalent employees shall be determined by dividing the number of hours
3 worked by part-time employees during the pertinent measurement interval
4 by an amount equal to the corresponding multiple of a 40-hour work week
5 and adding the quotient to the number of full-time employees.

6 (g) (1) *On and after January 1, 2016, a qualified firm shall employ a*
7 *sufficient number of Kansas workers such that at least 70% of the*
8 *employees assigned by such qualified firm to perform work in the state of*
9 *Kansas shall be Kansas workers. An employee shall be considered*
10 *assigned to perform work in the state of Kansas if the employee performs*
11 *any work that is performed in Kansas regardless of the proportion of such*
12 *work to the employee's regular employment duties.*

13 (2) *For the purposes of this subsection, the term "Kansas worker"*
14 *shall have the same meaning ascribed thereto in section 1, and*
15 *amendments thereto.*

16 (h) The secretary of commerce shall certify annually to the secretary
17 of revenue that a firm meets the criteria for a qualified firm and that the
18 firm is eligible for the benefits and assistance provided under this act. The
19 secretary of commerce is hereby authorized to obtain any and all
20 information necessary to determine such eligibility. Information obtained
21 under this section shall not be subject to disclosure pursuant to K.S.A. 45-
22 215 et seq., and amendments thereto, but shall upon request be made
23 available to the legislative post audit division. The secretary of commerce
24 shall publish rules and regulations for the implementation of this act. Such
25 rules and regulations shall include, but not be limited to:

26 (1) A definition of "training and education" for purposes of K.S.A.
27 74-50,132, and amendments thereto.

28 (2) Establishment of eligibility requirements and application
29 procedures for expenditures from the high performance incentive fund
30 created in K.S.A. 74-50,133, and amendments thereto.

31 (3) Establishment of approval guidelines for private consultants
32 authorized pursuant to K.S.A. 74-50,133, and amendments thereto.

33 (4) Establishment of guidelines for prioritizing business assistance
34 programs pursuant to K.S.A. 74-50,133, and amendments thereto.

35 (5) A definition of "commercial customer" for the purpose of K.S.A.
36 74-50,133, and amendments thereto.

37 (6) A definition of "headquarters" for the purpose of K.S.A. 74-
38 50,133, and amendments thereto.

39 (7) Establishment of guidelines concerning the use and disclosure of
40 any information obtained to determine the eligibility of a firm for the
41 assistance and benefits provided for by this act.

42 Sec. 4. K.S.A. 2014 Supp. 74-50,212 is hereby amended to read as
43 follows: 74-50,212. (a) In order to qualify for benefits under this act a

1 qualified company shall:

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

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

9 (3) expand an existing business facility, office, department or other
10 operation located in the state of Kansas and locate the jobs directly related
11 to such business facility, office, department or other operation in Kansas,
12 except that no payroll withholding taxes shall be retained prior to January
13 1, 2012.

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

20 (b) Any qualified company, approved by the secretary for benefits
21 pursuant to ~~paragraph~~ *subsection* (a), that locates its business operation in
22 a metropolitan county and will hire at least 10 new employees within two
23 years from the date the qualified company enters into an agreement with
24 the secretary pursuant to K.S.A. 2014 Supp. 74-50,213, and amendments
25 thereto, or any qualified company, approved by the secretary for benefits
26 pursuant to ~~paragraph~~ *subsection* (a), that locates its business operation in
27 a non-metropolitan county and will hire at least five new employees within
28 two years from the date the qualified company enters into an agreement
29 with the secretary pursuant to K.S.A. 2014 Supp. 74-50,213, and
30 amendments thereto, shall: (1) Be eligible to retain 95% of the qualified
31 company's Kansas payroll withholding taxes for such new employees
32 being paid the county median wage or higher for a period of up to:

33 (A) Five years if the median wage or average wage paid to the new
34 employees is equal to at least 100% of the county median wage;

35 (B) six years if the median wage or average wage paid to the new
36 employees is equal to at least 110% of the county median wage;

37 (C) seven years if the median wage or average wage paid to the new
38 employees is equal to at least 120% of the county median wage; or

39 (2) be eligible to retain 95% of the qualified company's Kansas
40 payroll withholding taxes for such new employees being paid the county
41 median wage or higher for a period of up to five years if the median wage
42 or average wage paid to the new employees is equal to at least 100% of the
43 NAICS code industry average wage.

1 (c) Any qualified company, approved by the secretary for benefits
2 pursuant to ~~paragraph~~ subsection (a), that engages in a high-impact project
3 whereby the qualified company will hire at least 100 new employees
4 within two years from the date the qualified company enters into an
5 agreement with the secretary pursuant to K.S.A. 2014 Supp. 74-50,213,
6 and amendments thereto, shall be eligible to retain 95% of the qualified
7 company's Kansas payroll withholding taxes for such new employees
8 being paid the county median wage or higher for a period of up to:

9 (1) Seven years if the median wage or average wage paid to the new
10 employees is equal to at least 100% of the county median wage;

11 (2) eight years if the median wage or average wage paid to the new
12 employees is equal to at least 110% of the county median wage;

13 (3) nine years if the median wage or average wage paid to the new
14 employees is equal to at least 120% of the county median wage; or

15 (4) ten years if the median wage or average wage paid to the new
16 employees is equal to at least 140% of the county median wage.

17 (d) In the event that a qualified company contracts with a third party
18 as described in subsection (a), the third party shall remit payments equal to
19 the amount of Kansas payroll withholding taxes the qualified company is
20 eligible to retain under this section to the qualified company, and report
21 such amount to the department of revenue as required pursuant to
22 ~~subsection (a) of~~ K.S.A. 2014 Supp. 74-50,214(a), and amendments
23 thereto.

24 (e) *(1) On or after January 1, 2016, a qualified company shall*
25 *employ a sufficient number of Kansas workers such that at least 70% of*
26 *the employees assigned by such qualified firm to perform work in the state*
27 *of Kansas shall be Kansas workers. An employee shall be considered*
28 *assigned to perform work in the state of Kansas if the employee performs*
29 *any work that is performed in Kansas regardless of the proportion of such*
30 *work to the employee's regular employment duties.*

31 *(2) For the purposes of this subsection, the term "Kansas worker"*
32 *shall have the meaning as defined in section 1, and amendments thereto.*

33 (f) Commencing January 1, 2013, and ending June 30, 2018, any
34 company, which meets the criteria provided pursuant to the provisions of
35 K.S.A. 2014 Supp. 74-50,211, and amendments thereto, that retains the
36 employees of an existing business unit located in Kansas and enters into an
37 agreement with the secretary pursuant to K.S.A. 2014 Supp. 74-50,213,
38 and amendments thereto, shall be eligible to retain 95% of the qualified
39 company's Kansas payroll withholding taxes for such employees for a
40 period of up to five years.

41 ~~(g)~~ (g) (1) Commencing January 1, 2013, and ending June 30, 2018,
42 pursuant to the provisions of ~~subsection (e)~~ (f), the secretary of commerce,
43 in the secretary's sole determination, may provide the benefits of the

1 promoting employment across Kansas act for situations where it is deemed
2 necessary by the secretary that the state of Kansas provide incentives for a
3 company or its operations currently located in Kansas to remain in Kansas
4 so as to keep its retained jobs. The secretary shall establish and verify that
5 a prospective company has competitive alternatives that it is seriously
6 considering and that a company's relocation may be imminent.
7 Furthermore, the secretary shall assess:

8 (A) Whether the retention of the company or its operations is
9 important to the economic vitality of the state;

10 (B) the area where such company or operations is located; or

11 (C) whether the retention of the company or its operations is
12 important to a particular industry in the state due to any number of factors
13 including, but not limited to, the quantity, quality or wages of the retained
14 jobs involved.

15 (2) Effective January 1, 2013, and ending June 30, 2018, the secretary
16 may use the promoting employment across Kansas act in conjunction with
17 other economic development programs to develop a retention package.

18 ~~(g)~~ (h) The provisions of this act as in effect prior to the effective date
19 of this act shall apply to employers who have entered into agreements with
20 the secretary prior to July 1, 2011. The provisions of this act shall apply to
21 employers who enter into agreements with the secretary on and after July
22 1, 2011.

23 ~~(h)~~ (i) In the event a qualified company entered into an agreement for
24 benefits under this section prior to January 1, 2013, such qualified
25 company may request the secretary to extend the benefit term of such
26 agreement by a period of up to two additional years. If in the secretary's
27 discretion it is necessary to provide the qualified company with all benefits
28 intended under such agreement, the extension may be granted.

29 Sec. 5. K.S.A. 2014 Supp. 79-32,154 is hereby amended to read as
30 follows: 79-32,154. As used in this act, the following words and phrases
31 shall have the meanings respectively ascribed to them herein:

32 (a) "Facility" shall mean any factory, mill, plant, refinery, warehouse,
33 feedlot, building or complex of buildings located within the state,
34 including the land on which such facility is located and all machinery,
35 equipment and other real and tangible personal property located at or
36 within such facility used in connection with the operation of such facility.
37 The word "building" shall include only structures within which individuals
38 are customarily employed or which are customarily used to house
39 machinery, equipment or other property.

40 (b) "Qualified business facility" shall mean a facility which satisfies
41 the requirements of paragraphs (1) ~~and~~, (2) *and* (3) of this subsection.

42 (1) Such facility is employed by the taxpayer in the operation of a
43 revenue producing enterprise, as defined in subsection (c). Such facility

1 shall not be considered a qualified business facility in the hands of the
2 taxpayer if the taxpayer's only activity with respect to such facility is to
3 lease it to another person or persons. If the taxpayer employs only a
4 portion of such facility in the operation of a revenue producing enterprise,
5 and leases another portion of such facility to another person or persons or
6 does not otherwise use such other portions in the operation of a revenue
7 producing enterprise, the portion employed by the taxpayer in the
8 operation of a revenue producing enterprise shall be considered a qualified
9 business facility, if the requirements of paragraph (2) of this subsection are
10 satisfied.

11 (2) If such facility was acquired by the taxpayer from another person
12 or persons, such facility was not employed, immediately prior to the
13 transfer of title to such facility to the taxpayer, or to the commencement of
14 the term of the lease of such facility to the taxpayer, by any other person or
15 persons in the operation of a revenue producing enterprise and the
16 taxpayer continues the operation of the same or substantially identical
17 revenue producing enterprise, as defined in subsection (i), at such facility.

18 (3) (A) *On and after January 1, 2016, a qualified business facility*
19 *shall employ a sufficient number of Kansas workers such that at least 70%*
20 *of the employees assigned by such facility to perform work in the state of*
21 *Kansas shall be Kansas workers. An employee shall be considered*
22 *assigned to perform work in the state of Kansas if the employee performs*
23 *any work that is performed in Kansas regardless of the proportion of such*
24 *work to the employee's regular employment duties.*

25 (B) *For the purposes of this subsection, the term "Kansas worker"*
26 *shall have the same meaning ascribed thereto in section 1, and*
27 *amendments thereto.*

28 (c) "Revenue producing enterprise" shall mean:

29 (1) The assembly, fabrication, manufacture or processing of any
30 agricultural, mineral or manufactured product;

31 (2) the storage, warehousing, distribution or sale of any products of
32 agriculture, aquaculture, mining or manufacturing;

33 (3) the feeding of livestock at a feedlot;

34 (4) the operation of laboratories or other facilities for scientific,
35 agricultural, aquacultural, animal husbandry or industrial research,
36 development or testing;

37 (5) the performance of services of any type;

38 (6) the feeding of aquatic plants and animals at an aquaculture
39 operation;

40 (7) the administrative management of any of the foregoing activities;

41 or

42 (8) any combination of any of the foregoing activities.

43 "Revenue producing enterprise" shall not mean a swine production

1 facility as defined in K.S.A. 17-5903, and amendments thereto, that is
2 owned or leased by a corporation or limited liability company.

3 (d) "Qualified business facility employee" shall mean a person
4 employed by the taxpayer in the operation of a qualified business facility
5 during the taxable year for which the credit allowed by K.S.A. 79-32,153,
6 and amendments thereto, is claimed:

7 (1) A person shall be deemed to be so engaged if such person
8 performs duties in connection with the operation of the qualified business
9 facility on: (A) A regular, full-time basis; (B) a part-time basis, provided
10 such person is customarily performing such duties at least 20 hours per
11 week throughout the taxable year; or (C) a seasonal basis, provided such
12 person performs such duties for substantially all of the season customary
13 for the position in which such person is employed. The number of
14 qualified business facility employees during any taxable year shall be
15 determined by dividing by 12 the sum of the number of qualified business
16 facility employees on the last business day of each month of such taxable
17 year. If the qualified business facility is in operation for less than the entire
18 taxable year, the number of qualified business facility employees shall be
19 determined by dividing the sum of the number of qualified business
20 facility employees on the last business day of each full calendar month
21 during the portion of such taxable year during which the qualified business
22 facility was in operation by the number of full calendar months during
23 such period. Notwithstanding the provisions of this subsection, for the
24 purpose of computing the credit allowed by K.S.A. 79-32,153, and
25 amendments thereto, in the case of an investment in a qualified business
26 facility, which facility existed and was operated by the taxpayer or related
27 taxpayer prior to such investment, the number of qualified business facility
28 employees employed in the operation of such facility shall be reduced by
29 the average number, computed as provided in this subsection, of
30 individuals employed in the operation of the facility during the taxable
31 year preceding the taxable year in which the qualified business facility
32 investment was made at the facility.

33 (2) For taxable years commencing after December 31, 1997, in the
34 case of a taxpayer claiming a credit against the premium tax and privilege
35 fees imposed pursuant to K.S.A. 40-252, and amendments thereto, or the
36 privilege tax as measured by net income of financial institutions imposed
37 pursuant to chapter 79 article 11 of the Kansas Statutes Annotated, *and*
38 *amendments thereto*, "qualified business employee" shall not mean any
39 person who is employed in the operation of a qualified business facility in
40 the state due to the merger, acquisition or other reconfiguration of the
41 taxpayer unless such employee's position represents a net gain of total
42 positions created by the taxpayer and the employee's position was not in
43 existence at the time of the merger acquisition or other reconfiguration of

1 the taxpayer.

2 (e) "Qualified business facility investment" shall mean the value of
3 the real and tangible personal property, except inventory or property held
4 for sale to customers in the ordinary course of the taxpayer's business,
5 which constitutes the qualified business facility, or which is used by the
6 taxpayer in the operation of the qualified business facility, during the
7 taxable year for which the credit allowed by K.S.A. 79-32,153, and
8 amendments thereto, is claimed. The value of such property during such
9 taxable year shall be: (1) Its original cost if owned by the taxpayer; or (2)
10 eight times the net annual rental rate, if leased by the taxpayer. The net
11 annual rental rate shall be the annual rental rate paid by the taxpayer less
12 any annual rental rate received by the taxpayer from subrentals. The
13 qualified business facility investment shall be determined by dividing by
14 12 the sum of the total value of such property on the last business day of
15 each calendar month of the taxable year. If the qualified business facility is
16 in operation for less than an entire taxable year, the qualified business
17 facility investment shall be determined by dividing the sum of the total
18 value of such property on the last business day of each full calendar month
19 during the portion of such taxable year during which the qualified business
20 facility was in operation by the number of full calendar months during
21 such period. Notwithstanding the provisions of this subsection, for the
22 purpose of computing the credit allowed by K.S.A. 79-32,153, and
23 amendments thereto, in the case of an investment in a qualified business
24 facility, which facility existed and was operated by the taxpayer or related
25 taxpayer prior to such investment the amount of the taxpayer's qualified
26 business facility investment in such facility shall be reduced by the
27 average amount, computed as provided in this subsection, of the
28 investment of the taxpayer or a related taxpayer in the facility for the
29 taxable year preceding the taxable year in which the qualified business
30 facility investment was made at the facility.

31 (f) "Commencement of commercial operations" shall be deemed to
32 occur during the first taxable year for which the qualified business facility
33 is first available for use by the taxpayer, or first capable of being used by
34 the taxpayer, in the revenue producing enterprise in which the taxpayer
35 intends to use the qualified business facility.

36 (g) "Qualified business facility income" shall mean the Kansas
37 taxable income derived by the taxpayer from the operation of the qualified
38 business facility. If a taxpayer has income derived from the operation of a
39 qualified business facility as well as from other activities conducted within
40 this state, the Kansas taxable income derived by the taxpayer from the
41 operation of the qualified business facility shall be determined by
42 multiplying the taxpayer's Kansas taxable income by a fraction, the
43 numerator of which is the property factor, as defined in paragraph (1), plus

1 the payroll factor, as defined in paragraph (2), and the denominator of
2 which is two. In the case of financial institutions, the property and payroll
3 factors shall be computed utilizing the specific provisions of the
4 apportionment method applicable to financial institutions, if enacted, and
5 the qualified business facility income shall be based upon net income.

6 (1) The property factor is a fraction, the numerator of which is the
7 average value of the taxpayer's real and tangible personal property owned
8 or rented and used in connection with the operation of the qualified
9 business facility during the tax period, and the denominator of which is the
10 average value of all the taxpayer's real and tangible personal property
11 owned or rented and used in this state during the tax period. The average
12 value of all such property shall be determined as provided in K.S.A. 79-
13 3281 and 79-3282, and amendments thereto.

14 (2) The payroll factor is a fraction, the numerator of which is the total
15 amount paid during the tax period by the taxpayer for compensation to
16 persons qualifying as qualified business facility employees, as determined
17 under subsection (d), at the qualified business facility, and the denominator
18 of which is the total amount paid in this state during the tax period by the
19 taxpayer for compensation. The compensation paid in this state shall be
20 determined as provided in K.S.A. 79-3283, and amendments thereto.

21 The formula set forth in this subsection (g) shall not be used for any
22 purpose other than determining the qualified business facility income
23 attributable to a qualified business facility.

24 (h) "Related taxpayer" shall mean: (1) A corporation, partnership,
25 trust or association controlled by the taxpayer; (2) an individual,
26 corporation, partnership, trust or association in control of the taxpayer; or
27 (3) a corporation, partnership, trust or association controlled by an
28 individual, corporation, partnership, trust or association in control of the
29 taxpayer. For the purposes of this act, "control of a corporation" shall mean
30 ownership, directly or indirectly, of stock possessing at least 80% of the
31 total combined voting power of all classes of stock entitled to vote and at
32 least 80% of all other classes of stock of the corporation; "control of a
33 partnership or association" shall mean ownership of at least 80% of the
34 capital or profits interest in such partnership or association; and "control of
35 a trust" shall mean ownership, directly or indirectly, of at least 80% of the
36 beneficial interest in the principal or income of such trust.

37 (i) "Same or substantially identical revenue producing enterprise"
38 shall mean a revenue producing enterprise in which the products produced
39 or sold, services performed or activities conducted are the same in
40 character and use, are produced, sold, performed or conducted in the same
41 manner and to or for the same type of customers as the products, services
42 or activities produced, sold, performed or conducted in another revenue
43 producing enterprise.

1 Sec. 6. K.S.A. 2014 Supp. 79-32,243 is hereby amended to read as
2 follows: 79-32,243. (a) For tax years commencing after December 31,
3 2005, any taxpayer claiming credits pursuant to K.S.A. 74-50,132, 79-
4 32,153 or 79-32,160a, and amendments thereto, as a condition for
5 claiming and qualifying for such credits, shall provide the following
6 information as part of the tax return, in which such credits are claimed,
7 which shall be used by the department of revenue in evaluating the
8 effectiveness of such tax credit programs, pursuant to K.S.A. 2014 Supp.
9 74-99b35, and amendments thereto:

10 (1) Actual jobs created as a direct result of the expenditures on which
11 such credit claim is based, if the taxpayer has previously submitted an
12 estimate of such number of actual jobs created to the department of
13 commerce as a part of applying for certification for such program
14 participation;

15 (2) additional payroll generated as a direct result of the expenditures
16 on which such credit claim is based, if the taxpayer has previously
17 submitted an estimate of such amount of additional payroll generated to
18 the department of commerce as a part of applying for certification for such
19 program participation;

20 (3) actual jobs retained as a direct result of the expenditures on which
21 such credit claim is based, if the taxpayer has previously submitted an
22 estimate of actual jobs retained to the department of commerce as a part of
23 applying for certification for such program participation;

24 (4) additional revenue generated as a direct result of the expenditures
25 on which such credit claim is based, if the taxpayer has previously
26 submitted an estimate of such amount of additional revenue generated to
27 the department of commerce as a part of applying for certification for such
28 program participation;

29 (5) additional sales generated as a direct result of the expenditures on
30 which such credit claim is based, if the taxpayer has previously submitted
31 an estimate of additional sales generated to the department of commerce as
32 a part of applying for certification for program participation;

33 (6) total employment and payroll at the end of the tax year in which
34 the credits are claimed; ~~and~~

35 (7) *any personnel information as required by the secretary of revenue*
36 *for the purpose of verifying the number of Kansas workers, as that term is*
37 *defined in section 1, and amendments thereto, employed by the qualified*
38 *business facility; and*

39 (8) such further information as shall be required by the secretary of
40 revenue.

41 (b) Such credits specified in subsection (a) shall not be denied solely
42 on the basis of the information provided by the taxpayer pursuant to
43 subsections (a)(1) through (a)(~~7~~)(8).

1 Sec. 7. K.S.A. 2014 Supp. 12-17,166, 74-50,131, 74-50,212, 79-
2 32,154 and 79-32,243 is hereby repealed.

3 Sec. 8. This act shall take effect and be in force from and after its
4 publication in the statute book.