

As Amended by House Committee

Session of 2005

HOUSE BILL No. 2505

By Committee on Taxation

2-25

10 AN ACT concerning the emerging industry investment act; amending
11 K.S.A. 2004 Supp. 74-99b33 and 74-99b34 and repealing the existing
12 sections.
13

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

15 Section 1. K.S.A. 2004 Supp. 74-99b33 is hereby amended to read
16 as follows: 74-99b33. As used in the emerging industry investment act,
17 and amendments thereto, the following words and phrases shall have the
18 following meanings unless a different meaning clearly appears from the
19 content:

20 (a) "Authority" means the Kansas bioscience authority as created by
21 K.S.A. 2004 Supp. 74-99b04, and amendments thereto.

22 (b) "Base year taxation" means ~~the 2003 state taxes payable by all~~
23 ~~bioscience companies, state universities and~~ 95% of the 2003 state with-
24 holding taxes of bioscience employees *working for bioscience companies*
25 *and state universities* currently located in or operating in the state. *The*
26 *base year taxation may be adjusted in future years to account for the*
27 *addition of new bioscience companies and the identification of existing*
28 *bioscience companies inadvertently omitted from prior determinations.*
29 *When a bioscience company is added, the base year taxation shall be*
30 *amended by 95% of the company's 2003 state withholding taxes, if any.*

31 (c) "Bioscience" means the use of compositions, methods and organ-
32 isms in cellular and molecular research, development and manufacturing
33 processes for such diverse areas as pharmaceuticals, medical therapeutics,
34 medical diagnostics, medical devices, medical instruments, biochemistry,
35 microbiology, veterinary medicine, plant biology, agriculture, industrial,
36 environmental, and homeland security applications of bioscience and fu-
37 ture developments in the biosciences. Bioscience includes biotechnology
38 and life sciences.

39 (d) "Bioscience company" or "bioscience companies" means a cor-
40 poration, limited liability company, S corporation, partnership, registered
41 limited liability partnership, foundation, association, nonprofit entity, sole
42 proprietorship, business trust, person, group or other entity that is en-
43 gaged in the business of bioscience in the state and has business opera-

1 tions in the state, including, without limitation, research, development,
2 *sales, services, distribution* or production directed towards developing or
3 providing bioscience products or processes for specific commercial or
4 public purposes ~~and are identified~~ **but shall not include entities en-**
5 **gaged in the distribution or retail sale of pharmaceuticals or other**
6 **bioscience products.** *The authority and the secretary of revenue shall*
7 *jointly determine whether an entity qualifies as a “bioscience company”*
8 *based on verifiable evidence. One of the factors that shall be considered*
9 *is whether a company has been identified by the department of labor by*
10 *one of the following NAICS codes: 325411, 325412, 325413, 325414,*
11 *325193, 325199, 325311, 325320, 334516, 339111, 339112, 339113,*
12 *334510, 334517, 339115, 621511, 621512, ~~54171~~ 541710, ~~54138~~ 541380,*
13 *~~54194~~ 541940 and 622110. Such company shall be presumed to be a*
14 *bioscience company unless the authority and the secretary of revenue*
15 *agree, based on verifiable evidence, that the company is not engaged in*
16 *the business of bioscience in the state. A company identified by another*
17 *NAICS code may be determined to be a bioscience company by the au-*
18 *thority and the secretary of revenue based on verifiable evidence that the*
19 *company is engaged in the business of bioscience in the state.*

20 (e) “Bioscience development and investment fund” means the fund
21 created by K.S.A. 2004 Supp. 74-99b34 and amendments thereto.

22 (f) “Bioscience employee” means any employee, officer or director
23 of a bioscience company who is employed in the 2003 tax year or after
24 December 31, 2003 and who is also a state taxpayer and any employee
25 of state universities who is associated with bioscience research in the 2003
26 tax year or after December 31, 2003 and who is also a state taxpayer.

27 (g) “Bioscience research” means any original investigation for the ad-
28 vancement of scientific or technological knowledge of bioscience and any
29 activity that seeks to utilize, synthesize, or apply existing knowledge, in-
30 formation or resources to the resolution of a specific problem, question
31 or issue of bioscience.

32 (h) “Biotechnology” means those fields focusing on technological de-
33 velopments in such areas as molecular biology, genetic engineering, gen-
34 omics, proteomics, physiomics, nanotechnology, biodefense, biocomput-
35 ing and bioinformatics and future developments associated with
36 biotechnology.

37 (i) “Board” means the board of directors of the authority.

38 (j) “Eminent scholar” means world-class, distinguished and estab-
39 lished investigators recognized nationally for their research, achievements
40 and ability to garner significant federal funding on an annual basis. Em-
41 inent scholars are recognized for their scientific knowledge and entre-
42 preneurial spirit to enhance the innovative research that leads to eco-
43 nomic gains. Eminent scholars are either members of or likely candidates

1 for the national academy of sciences or other prominent national aca-
2 demic science organizations.

3 (k) “Life sciences” means, without limitation, the areas of medical
4 sciences, pharmaceutical sciences, biological sciences, zoology, botany,
5 horticulture, ecology, toxicology, organic chemistry, physical chemistry
6 and physiology and any future advances associated with the life sciences.

7 (l) “NAICS” means the north American industry classification
8 system.

9 (m) “Rising star scholar” means up-and-coming distinguished inves-
10 tigators growing in their national reputations in their fields, who are active
11 and demonstrate leadership in their associated professional societies, and
12 who attract significant federal research grant support. Rising star scholars
13 would be likely candidates for the national academy of science or other
14 prominent national academic science organizations in the future.

15 (n) “State” means the state of Kansas.

16 (o) ~~“State income taxes” means all of the taxes levied pursuant to~~
17 ~~K.S.A. 79-3201 et seq., and amendments thereto.~~

18 ~~—(p) “State taxes” means all taxes on property, sales and use, license,~~
19 ~~individual income tax and corporate net income tax pursuant to law except~~
20 ~~for property taxes levied for schools.~~

21 ~~—(q) “State universities” includes state educational institutions as de-~~
22 ~~defined in K.S.A. 76-711, and amendments thereto, and the municipal uni-~~
23 ~~versity as defined in K.S.A. 74-3201b, and amendments thereto.~~

24 ~~(r)~~ ~~(q)~~ **(p)** “Subsequent year taxation” means 95% of all state *with-*
25 *holding* taxes payable by bioscience companies that commence operating
26 in the state after December 31, 2003, and 95% of withholding associated
27 with new bioscience employees added to bioscience companies and state
28 universities and associated with growth of the existing bioscience em-
29 ployee withholding base after December 31, 2003.

30 ~~(s)~~ ~~(r)~~ **(q)** “Taxpayer” means a person, corporation, limited liability
31 company, S corporation, partnership, registered limited liability partner-
32 ship, foundation, association, nonprofit entity, sole proprietorship, busi-
33 ness trust, group or other entity that is subject to the Kansas income tax
34 act, K.S.A. 79-3201 et seq. and amendments thereto.

35 ~~(t)~~ ~~(s)~~ **(r)** “This act” means the emerging industry investment act.

36 Sec. 2. K.S.A. 2004 Supp. 74-99b34 is hereby amended to read as
37 follows: 74-99b34. (a) The bioscience development and investment fund
38 is hereby created. The bioscience development and investment fund shall
39 not be a part of the state treasury and the funds in the bioscience devel-
40 opment and investment fund shall belong exclusively to the authority.

41 (b) Distributions from the bioscience development and investment
42 fund shall be for the exclusive benefit of the authority, under the control
43 of the board and used to fulfill the purpose, powers and duties of the

1 authority pursuant to the provisions of K.S.A. 2004 Supp. 74-99b01 et
2 seq., and amendments thereto.

3 (c) The secretary of revenue and the authority shall establish the base
4 year taxation for all bioscience companies and state universities. The sec-
5 retary of revenue, the authority and the board of regents shall establish
6 the number of bioscience employees associated with state universities and
7 report annually and determine the increase from the taxation base an-
8 nually. *The secretary of revenue and the authority may consider any ver-*
9 *ifiable evidence, including, but not limited to, the NAICS code assigned*
10 *or recorded by the department of labor for companies with employees in*
11 *Kansas, when determining which companies should be classified as bio-*
12 *science companies.*

13 (d) For a period of 15 years from the effective date of this act, ~~the~~
14 ~~state treasurer shall pay to the bioscience development and investment~~
15 ~~fund the state taxes in excess of the base year taxation from all bioscience~~
16 ~~companies as certified by the secretary of revenue.~~

17 ~~—(e)—~~ ~~In addition,~~ the state treasurer shall pay annually, 95% of with-
18 holding above the base, as certified by the secretary of revenue, upon
19 Kansas wages paid by bioscience employees to the bioscience develop-
20 ment and investment fund. On or before the 10th day of each month, the
21 director of accounts and reports shall transfer from the state general fund
22 to the bioscience development and investment fund interest earnings
23 based on:

24 (1) The average daily balance of moneys in the bioscience develop-
25 ment and investment fund for the preceding month; and

26 (2) the net earnings rate of the pooled money investment portfolio
27 for the preceding month.

28 (e) *The cumulative amounts of funds paid by the state treasurer to*
29 *the bioscience development and investment fund shall not exceed the fol-*
30 *lowing benchmarks: End of fiscal year 2005—\$5.0 million, end of fiscal*
31 *year 2006—\$15.8 million, end of fiscal year 2007—\$33.3 million, end of*
32 *fiscal year 2008—\$58.5 million, end of fiscal year 2009—\$92.6 million,*
33 *end of fiscal year 2010—\$137.0 million, end of fiscal year 2011—\$193.3*
34 *million, end of fiscal year 2012—\$263.5 million, end of fiscal year 2013—*
35 *\$349.8 million, end of fiscal year 2014—\$454.9 million, end of fiscal year*
36 *2015—\$581.8 million. When the cumulative amount of funds due to be*
37 *paid by the state treasurer to the bioscience development and investment*
38 *fund exceed the above benchmarks, the excess amounts above the bench-*
39 *marks shall be paid by the state treasurer to the bioscience development*
40 *and investment fund at the beginning of the following fiscal year. Beyond*
41 *2015, there shall be no restrictions on the amounts paid by the state trea-*
42 *surer to the bioscience development and investment fund.*

43 (f) The division of post audit is hereby authorized to conduct a post

1 audit in accordance with the provisions of the state post audit act to K.S.A.
2 46-1106 et seq. and amendments thereto.

3 (g) At the direction of the authority, the fund may be held in the
4 custody of and invested by the state treasurer, provided that the biosci-
5 ence development and investment fund shall at all times be accounted
6 for in a separate report from all other funds of the authority and the state.

7 Sec. 3. K.S.A. 2004 Supp. 74-99b33 and 74-99b34 are hereby
8 repealed.

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