

SENATE BILL No. 560

By Committee on Commerce

2-14

9 AN ACT concerning the emerging industry investment act; creating the
10 emerging industry investment oversight council; relating to powers and
11 duties; amending K.S.A. 2005 Supp. 74-99b33 and 74-99b34 and re-
12 pealing the existing sections.
13

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

15 New Section 1. (a) There is hereby created the emerging industry
16 investment oversight council consisting of six members. The members of
17 the emerging industry investment oversight council shall be (1) the gov-
18 ernor or the governor's designee, (2) the president of the senate or the
19 president's designee, (3) the speaker of the house of representatives or
20 the speaker's designee, (4) the minority floor leader of the senate or a
21 designee and (5) the minority floor leader of the house of representatives
22 or a designee. The governor shall be the chairperson and the staff of the
23 Kansas technology enterprise corporation shall serve as the secretary of
24 the council but shall not be a member of such council.

25 (b) The council shall meet at least four times per year and at such
26 other times as it deems appropriate, or upon call by the chairperson, or
27 upon written request of a majority of the members of the council. The
28 council may adopt, repeal and amend such rules, procedures and bylaws,
29 not contrary to law or inconsistent with this act, as it deems expedient for
30 its own governance and for the governance and management of the au-
31 thority. A majority of the total voting membership of the board shall
32 constitute a quorum for meetings. The council may act by a majority of
33 those at any meeting where a quorum is present.

34 (c) The council shall: (1) Ensure that the department of revenue ful-
35 fills its obligations under this act; and

36 (2) arbitrate disagreements between the bioscience authority and the
37 secretary of revenue over the classification of groups or entities as bio-
38 science companies under this act.

39 (d) The oversight council shall engage auditors, at the expense of the
40 bioscience authority, to certify the completeness and accuracy of infor-
41 mation prepared by the department of revenue in fulfillment of its obli-
42 gations under this act. The oversight council shall have the power to adjust
43 or amend the amounts certified by the secretary of revenue for disburse-

1 ment by the state treasurer to the authority.

2 (e) This section, and amendments thereto, shall be part of and sup-
3 plemental to the emerging industry investment act.

4 Sec. 2. K.S.A. 2005 Supp. 74-99b33 is hereby amended to read as
5 follows: 74-99b33. As used in the emerging industry investment act, and
6 amendments thereto, the following words and phrases shall have the fol-
7 lowing meanings unless a different meaning clearly appears from the
8 content:

9 (a) "Authority" means the Kansas bioscience authority as created by
10 K.S.A. 2005 Supp. 74-99b04, and amendments thereto.

11 (b) "Base year taxation" means 95% of the 2003 state withholding
12 taxes of bioscience employees working for bioscience companies and state
13 universities currently located in or operating in the state. The base year
14 taxation may be adjusted in future years to account for the addition of
15 new bioscience companies and the identification of existing bioscience
16 companies inadvertently omitted from prior determinations. When a bi-
17 oscience company is added, the base year taxation shall be amended by
18 95% of the company's 2003 state withholding taxes, if any.

19 (c) "Bioscience" means the use of compositions, methods and organ-
20 isms in cellular and molecular research, development and manufacturing
21 processes for such diverse areas as pharmaceuticals, medical therapeutics,
22 medical diagnostics, medical devices, medical instruments, biochemistry,
23 microbiology, veterinary medicine, plant biology, agriculture, industrial,
24 environmental, and homeland security applications of bioscience and fu-
25 ture developments in the biosciences. Bioscience includes biotechnology
26 and life sciences.

27 (d) "Bioscience company" or "bioscience companies" means a cor-
28 poration, limited liability company, S corporation, partnership, registered
29 limited liability partnership, foundation, association, nonprofit entity, sole
30 proprietorship, business trust, person, group or other entity that is en-
31 gaged in the business of bioscience in the state and has business opera-
32 tions in the state, including, without limitation, research, development,
33 sales, services, distribution or production directed towards developing or
34 providing bioscience products or processes for specific commercial or
35 public purposes ~~but shall not include entities engaged in the distribution
36 or retail sale of pharmaceuticals or other bioscience products. The au-
37 thority and the secretary of revenue shall jointly determine whether an
38 entity qualifies as a "bioscience company" based on verifiable evidence.
39 One of the factors that shall be considered is whether a company has
40 been identified by the department of labor by one of the following NAICS
41 codes: 325411, 325412, 325413, 325414, 325193, 325199, 325311,
42 325320, 334516, 339111, 339112, 339113, 334510, 334517, 339115,
43 621511, 621512, 541710, 541380, 541940 and 622110. Such company~~

- 1 ~~shall be presumed to be a bioscience company unless the authority and~~
2 ~~the secretary of revenue agree, based on verifiable evidence, that the~~
3 ~~company is not engaged in the business of bioscience in the state. A~~
4 ~~company identified by another NAICS code may be determined to be a~~
5 ~~bioscience company by the authority and the secretary of revenue based~~
6 ~~on verifiable evidence that the company is engaged in the business of~~
7 ~~bioscience in the state.~~
- 8 (e) “Bioscience development and investment fund” means the fund
9 created by K.S.A. 2005 Supp. 74-99b34 and amendments thereto.
- 10 (f) “Bioscience employee” means any employee, officer or director
11 of a bioscience company who is employed in the 2003 tax year or after
12 December 31, 2003 and who is also a state taxpayer and any employee
13 of state universities who is associated with bioscience research in the 2003
14 tax year or after December 31, 2003 and who is also a state taxpayer.
- 15 (g) “Bioscience research” means any original investigation for the ad-
16 vancement of scientific or technological knowledge of bioscience and any
17 activity that seeks to utilize, synthesize, or apply existing knowledge, in-
18 formation or resources to the resolution of a specific problem, question
19 or issue of bioscience.
- 20 (h) “Biotechnology” means those fields focusing on technological de-
21 velopments in such areas as molecular biology, genetic engineering, gen-
22 omics, proteomics, physiomics, nanotechnology, biodefense, biocomput-
23 ing and bioinformatics and future developments associated with
24 biotechnology.
- 25 (i) “Board” means the board of directors of the authority.
- 26 (j) “Eminent scholar” means world-class, distinguished and estab-
27 lished investigators recognized nationally for their research, achievements
28 and ability to garner significant federal funding on an annual basis. Em-
29 inent scholars are recognized for their scientific knowledge and entre-
30 preneurial spirit to enhance the innovative research that leads to eco-
31 nomic gains. Eminent scholars are either members of or likely candidates
32 for the national academy of sciences or other prominent national aca-
33 demic science organizations.
- 34 (k) “Life sciences” means, without limitation, the areas of medical
35 sciences, pharmaceutical sciences, biological sciences, zoology, botany,
36 horticulture, ecology, toxicology, organic chemistry, physical chemistry
37 and physiology and any future advances associated with the life sciences.
- 38 (l) “NAICS” means the north American industry classification
39 system.
- 40 (m) “Rising star scholar” means up-and-coming distinguished inves-
41 tigators growing in their national reputations in their fields, who are active
42 and demonstrate leadership in their associated professional societies, and
43 who attract significant federal research grant support. Rising star scholars

1 would be likely candidates for the national academy of science or other
2 prominent national academic science organizations in the future.

3 (n) "State" means the state of Kansas.

4 (o) "State universities" includes state educational institutions as de-
5 fined in K.S.A. 76-711, and amendments thereto, and the municipal uni-
6 versity as defined in K.S.A. 74-3201b, and amendments thereto.

7 (p) "Subsequent year taxation" means 95% of all state withholding
8 taxes payable by bioscience companies that commence operating in the
9 state after December 31, 2003, and 95% of withholding associated with
10 new bioscience employees added to bioscience companies and state uni-
11 versities and associated with growth of the existing bioscience employee
12 withholding base after December 31, 2003.

13 (q) "Taxpayer" means a person, corporation, limited liability com-
14 pany, S corporation, partnership, registered limited liability partnership,
15 foundation, association, nonprofit entity, sole proprietorship, business
16 trust, group or other entity that is subject to the Kansas income tax act;
17 ~~K.S.A. 79-3201 et seq. and amendments thereto.~~

18 (r) "This act" means the emerging industry investment act.

19 (s) "*Oversight council*" means the emerging industry investment over-
20 sight council.

21 Sec. 3. K.S.A. 2005 Supp. 74-99b34 is hereby amended to read as
22 follows: 74-99b34. Bioscience development and investment fund; depos-
23 its; distributions; audits. (a) The bioscience development and investment
24 fund is hereby created. The bioscience development and investment fund
25 shall not be a part of the state treasury and the funds in the bioscience
26 development and investment fund shall belong exclusively to the
27 authority.

28 (b) Distributions from the bioscience development and investment
29 fund shall be for the exclusive benefit of the authority, under the control
30 of the board and used to fulfill the purpose, powers and duties of the
31 authority pursuant to the provisions of K.S.A. 2005 Supp. 74-99b01 et
32 seq., and amendments thereto.

33 (c) The secretary of revenue and the authority shall establish the base
34 year taxation for all bioscience companies and state universities. The sec-
35 retary of revenue, the authority and the board of regents shall establish
36 the number of bioscience employees associated with state universities and
37 report annually and determine the increase from the taxation base an-
38 nually. The secretary of revenue and the authority may consider any ver-
39 ifiable evidence, including, but not limited to, the NAICS code assigned
40 or recorded by the department of labor for companies with employees in
41 Kansas, when determining which companies should be classified as bio-
42 science companies.

43 (d) *The authority and the secretary of revenue shall jointly determine*

1 *whether an entity qualifies as a “bioscience company” based on verifiable*
2 *evidence. One of the factors that shall be considered is whether a company*
3 *has been identified by the department of labor by one of the following*
4 *NAICS codes: 325411, 325412, 325413, 325414, 325193, 325199, 325311,*
5 *325320, 334516, 339111, 339112, 339113, 334510, 334517, 339115,*
6 *621511, 621512, 541710, 541380, 541940 and 622110. Such company*
7 *shall be presumed to be a bioscience company unless the authority and*
8 *the secretary of revenue agree, based on verifiable evidence, that the com-*
9 *pany is not engaged in the business of bioscience in the state. A company*
10 *identified by another NAICS code may be determined to be a bioscience*
11 *company by the authority and the secretary of revenue based on verifiable*
12 *evidence that the company is engaged in the business of bioscience in the*
13 *state.*

14 ~~(d)~~ (e) For a period of 15 years from the effective date of this act,
15 the state treasurer shall pay annually 95% of withholding above the base,
16 as certified by the secretary of revenue *and approved by the oversight*
17 *board*, upon Kansas wages paid by bioscience employees to the bioscience
18 development and investment fund. The state treasurer ~~may make esti-~~
19 ~~mated shall make~~ payments to the bioscience authority ~~more frequently~~
20 *quarterly* based on estimates provided by the secretary of revenue, *ap-*
21 *proved or amended by the oversight board*, and reconciled annually. On
22 or before the 10th day of each month, the director of accounts and reports
23 shall transfer from the state general fund to the bioscience development
24 and investment fund interest earnings based on:

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

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

29 ~~(e)~~ (f) The cumulative amounts of funds paid by the state treasurer
30 to the bioscience development and investment fund shall not exceed
31 \$581.8 million.

32 ~~(f)~~ (g) The division of post audit is hereby authorized to conduct a
33 post audit in accordance with the provisions of the state post audit act ~~to~~,
34 K.S.A. 46-1106 et seq. and amendments thereto.

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

39 Sec. 4. K.S.A. 2005 Supp. 74-99b33 and 74-99b34 are hereby
40 repealed.

41 Sec. 5. This act shall take effect and be in force from and after its
42 publication in the statute book.