

SENATE BILL No. 244

By Committee on Assessment and Taxation

2-6

9 AN ACT concerning the economic revitalization and reinvestment act;
10 relating to eligible businesses; amending K.S.A. 2008 Supp. 74-50,136
11 and repealing the existing section.
12

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

14 Section 1. K.S.A. 2008 Supp. 74-50,136 is hereby amended to read
15 as follows: 74-50,136. (a) The provisions of this section shall be known
16 and may be cited as the “economic revitalization and reinvestment act.”

17 (b) The purpose of the economic revitalization and reinvestment act
18 is to foster Kansas employment by encouraging ~~product development and~~
19 ~~engineering leading to new manufactured products~~ *economic develop-*
20 *ment, new business development and investment and product develop-*
21 *ment* in Kansas.

22 (c) As used in this act:

23 (1) “Base eligibility period” means the three taxable years immedi-
24 ately preceding the date of application for benefits under this act.

25 (2) ~~“Eligible aviation business” means a person, corporation, part-~~
26 ~~nership or other entity engaged in the aviation manufacturing or service~~
27 ~~industry and doing business in Kansas that satisfies conditions imposed~~
28 ~~by the secretary, which may include, among other conditions, that the~~
29 ~~person, corporation, partnership or other entity:~~

30 ~~—(A)— Paid at least \$300,000,000 in average annual gross Kansas com-~~
31 ~~penensation, according to reports filed with the secretary of labor, during~~
32 ~~the base eligibility period;~~

33 ~~—(B)— paid at least \$50,000 of average annual gross compensation per~~
34 ~~Kansas employee during the base eligibility period;~~

35 ~~—(C)— has invested at least \$500,000,000 in real and tangible personal~~
36 ~~property located within and currently used in the operation of a business~~
37 ~~in Kansas; and~~

38 ~~—(D)— is described by the north American industrial classification sys-~~
39 ~~tem as being in the manufacturing or service sector.~~

40 ~~—(3)— “Eligible aviation project” means a research, development, engi-~~
41 ~~neering or manufacturing project (A) undertaken by an eligible aviation~~
42 ~~business relating to the development of a new or improved business com-~~
43 ~~ponent or product and may include, but not be limited to, product de-~~

1 ~~velopment and design, applied research, manufacturing, improvement,~~
 2 ~~replacement or acquisition of real or personal property and modernization~~
 3 ~~and retooling of existing property in Kansas, (B) for which the eligible~~
 4 ~~aviation business proposes to invest not less than \$500,000,000 in Kansas~~
 5 ~~in direct connection with the eligible aviation project of not less than~~
 6 ~~\$500,000,000 in Kansas and (C) for which the eligible aviation business~~
 7 ~~proposes to employ up to 4,000 full-time employees in Kansas, as defined~~
 8 ~~in K.S.A. 74-50,114, and amendments thereto.~~

9 ~~(4)~~ “Eligible business” means a person, corporation, partnership or
 10 other entity doing business in Kansas *or which will do business in Kansas*
 11 that satisfies conditions imposed by the secretary, which may include,
 12 among other conditions, that the person, corporation, partnership or
 13 other entity:

14 (A) Paid at least ~~\$600,000,000~~ \$100,000,000 in average annual gross
 15 Kansas compensation, according to reports filed with the secretary of
 16 labor, during the base eligibility period *or will pay at least \$100,000,000*
 17 *in average annual gross Kansas compensation according to information*
 18 *filed with the secretary during the first year such eligible business is doing*
 19 *business in Kansas; and*

20 (B) paid at least \$50,000 of average annual gross compensation per
 21 Kansas employee during the base eligibility period *or will pay at least*
 22 *\$50,000 of average annual gross compensation per employee during the*
 23 *first year such eligible business is doing business in Kansas; and*

24 (C) has invested at least ~~\$1,000,000,000~~ \$250,000,000 in real and tan-
 25 gible personal property located within and currently used in the operation
 26 of a business in Kansas, ~~and~~

27 ~~(D) is described by north American industrial classification system as~~
 28 ~~being in the manufacturing sector or will invest in at least \$250,000,000~~
 29 ~~in real and tangible personal property located within and which will be~~
 30 ~~used in the operation of a business in Kansas during the first year such~~
 31 ~~eligible business is doing business in Kansas.~~

32 ~~(5)~~ (4) “Eligible project” means a ~~research, development, engineer-~~
 33 ~~ing or manufacturing~~ project (A) undertaken by an eligible business relat-
 34 ing to *economic development, new business development and invest-*
 35 *ment* the development of a new or improved business component or
 36 product and may include, but not be limited to, product development
 37 and design, applied research, manufacturing, improvement, replacement
 38 or acquisition of real or personal property and modernization and re-
 39 tooling of existing property in Kansas *or property to be acquired in Kan-*
 40 *sas,* (B) for which the eligible business proposes to invest not less than
 41 ~~\$500,000,000~~ \$250,000,000 in Kansas in direct connection with the eli-
 42 gible project of not less than ~~\$500,000,000~~ \$250,000,000 in Kansas and
 43 (C) for which the eligible business proposes to employ up to ~~4,000~~ 2,000

1 full-time employees in Kansas, as defined in K.S.A. 74-50,114, and
2 amendments thereto.

3 ~~(6)~~ (5) "Gross compensation" means gross wages and benefits paid
4 to or on behalf of employees receiving wages.

5 ~~(7)~~ (6) "Secretary" means the secretary of commerce.

6 (d) A person, corporation, partnership or other entity proposing to
7 undertake an eligible project ~~or eligible aviation project~~ may apply to the
8 secretary to enter into an agreement for benefits under this act. The
9 application shall include (1) evidence that the applicant is an "eligible
10 business" ~~or "eligible aviation business"~~ as defined in subsection (c) and
11 (2) a detailed description of the eligible project ~~or eligible aviation project~~.

12 (e) Upon receipt of an application described in subsection (d), if the
13 secretary finds that the application is from an eligible business ~~or eligible~~
14 ~~aviation business~~ and that the project constitutes an eligible project ~~or~~
15 ~~eligible aviation project~~, the secretary may enter into an agreement with
16 the eligible business ~~or eligible aviation business~~ for benefits under this
17 act. Such agreement for benefits shall be subject to review and approval
18 of the state finance council created by K.S.A. 75-3708, and amendments
19 thereto. The agreement shall commit the secretary to request that the
20 Kansas development finance authority issue bonds pursuant to the Kansas
21 development finance authority act, K.S.A. 74-8901 et seq., and amend-
22 ments thereto, to finance the eligible project for the benefit of the eligible
23 business in an aggregate principal amount not to exceed ~~\$500,000,000~~
24 ~~\$250,000,000~~, plus costs of issuance, costs of credit enhancement, reserve
25 funds and capitalized interest, ~~or in the case of an eligible aviation project~~
26 ~~in a principal amount not to exceed \$33,000,000 for a single eligible avi-~~
27 ~~ation project and in an aggregate principal amount not to exceed~~
28 ~~\$150,000,000 for all eligible aviation projects, plus costs of issuance, costs~~
29 ~~of credit enhancement, reserve funds and capitalized interest, and shall~~
30 commit the eligible business ~~or eligible aviation business~~ to pay the prin-
31 cipal of and interest on such obligations, except that during the period
32 from the issuance of such bonds through the maturity of such obligations
33 but not to exceed 20 years revenue realized from withholding upon Kan-
34 sas wages paid by the eligible business ~~or eligible aviation business~~ pur-
35 suant to K.S.A. 79-3294 et seq., and amendments thereto, which is nec-
36 essary to pay the principal and interest on such obligations shall be
37 credited to the special economic revitalization fund created in subsection
38 (h), and shall be transferred by the state treasurer to pay principal and
39 interest on such obligations as provided by law. The agreement shall fur-
40 ther specifically provide that if the revenue from the withholding upon
41 Kansas wages is insufficient to pay principal and interest on the bonds,
42 the eligible business ~~or eligible aviation business~~ shall remain obligated
43 to make such payments. The terms and conditions with respect to the

1 obligations shall be set forth in the agreement or in the financing docu-
2 ments relating to the issuance of the bonds. In the event the eligible
3 business ~~or eligible aviation business~~ terminates, cancels or reduces the
4 scope of the eligible project ~~or eligible aviation project~~ approved by the
5 secretary, the agreement shall provide that with respect to debt service,
6 the eligible business ~~or eligible aviation business~~ shall remain responsible
7 for payment of the entire outstanding principal as well as any interest still
8 outstanding, and no moneys remaining in the special economic revitali-
9 zation fund shall be made available for the purpose of paying the re-
10 maining principal and interest portion of the eligible business' ~~or eligible~~
11 ~~aviation business~~' debt service obligation.

12 (f) Income tax refunds and balances due resulting from withholding
13 upon Kansas wages paid by the eligible business ~~or eligible aviation busi-~~
14 ~~ness~~ pursuant to K.S.A. 79-3294 et seq., and amendments thereto, shall
15 be reconciled on at least an annual basis by a method defined in the
16 agreement described in subsection (e).

17 (g) The Kansas development finance authority is hereby authorized
18 to issue obligations, for the purpose of financing the eligible project ~~or~~
19 ~~eligible aviation project~~ provided in subsection (e), in a principal amount
20 not to exceed the amount specified in subsection (e). The maximum ma-
21 turity of bonds issued pursuant to this act shall be 20 years, ~~unless the~~
22 ~~secretary shall find and determine that a maturity greater than 20 years,~~
23 ~~but in no event greater than 30 years, is necessary for economic feasibility~~
24 ~~of the eligible project or eligible aviation project of the eligible business~~
25 ~~or eligible aviation business.~~

26 (h) The state treasurer shall credit all revenue collected or received
27 from withholding upon Kansas wages paid by a taxpayer which is an eli-
28 gible business ~~or eligible aviation business~~ with respect to an eligible
29 project ~~or eligible aviation project~~, as certified by the secretary, to the
30 special economic revitalization fund, which fund is hereby created in the
31 custody of the state treasurer but shall not be a part of the state general
32 fund. Distributions from the special economic revitalization fund shall be
33 used to pay principal and interest on the bonds as authorized pursuant
34 to this act and shall not be subject to appropriation. On or before the
35 10th day of each month, the director of accounts and reports shall transfer
36 from the state general fund to the special economic revitalization fund
37 interest earnings based on: (1) The average daily balance of moneys in
38 the special economic revitalization fund for the preceding month; and (2)
39 the net earnings rate of the pooled money investment portfolio for the
40 preceding month. The provisions of this section shall expire when all
41 principal and interest on obligations issued for the purpose of financing
42 all or a portion of the costs of an eligible project ~~or eligible aviation project~~
43 has been paid. Moneys credited to the special economic revitalization

1 fund in accordance with the foregoing provisions shall be distributed to
2 or on the order of the Kansas development finance authority to pay prin-
3 cipal and interest on bonds issued to finance an eligible project ~~or eligible~~
4 ~~aviation project~~. The state treasurer shall make such distributions on such
5 dates as mutually agreed to by the Kansas development finance authority,
6 the paying agent for such obligations and the state treasurer. The total of
7 all distributions under this section shall not exceed an amount determined
8 to be sufficient to pay the principal and interest on such bonds.

9 (i) The eligible business ~~or eligible aviation business~~ shall not be al-
10 lowed to participate in the IMPACT act or program pursuant to K.S.A.
11 74-50,102 et seq., and amendments thereto, with respect to the eligible
12 project ~~or eligible aviation project~~. The secretary may include provisions
13 in the agreement described in subsection (e) to limit or reduce the
14 amount of eligible credits, including but not limited to those allowed
15 pursuant to K.S.A. 79-32,160a, 79-32,182b or 79-32,206, and amend-
16 ments thereto, on the investment of the proceeds of the bonds issued
17 under this act. Nothing in this subsection shall be construed to prohibit
18 the eligible business ~~or eligible aviation business~~ from receiving credits
19 allowed by law for any investment not related to bonds issued pursuant
20 to this section.

21 (j) All hiring and use of the employees described in subsection
22 ~~(e)(5)(C)~~ (c)(4)(C) by an eligible business in connection with an eligible
23 project, ~~or described in subsection (c)(3)(C) by an eligible aviation busi-~~
24 ~~ness in connection with an eligible aviation project~~, shall be subject to
25 post audit under the legislative post audit act, and amendments thereto.
26 All audit expenses incurred shall be charged to and paid by such eligible
27 business ~~or eligible aviation business~~. All moneys received for such audit
28 expenses shall be deposited in the state treasury and credited to the audit
29 services fund of the division of post audit. The division of post audit is
30 hereby authorized to conduct the audit work authorized by this section
31 in accordance with the provisions of the legislative post audit act, and
32 amendments thereto.

33 (k) Bonds issued under this section shall not be used to provide for
34 or to increase compensation packages, rewards, bonuses, pensions, en-
35 hanced retirement, stock options, buyouts or substantial severance pay or
36 other financial benefits to any chief executive officer, chief financial of-
37 ficer or any officers of the company.

38 (l) The agreement described in subsection (e) shall include a provi-
39 sion requiring the eligible business ~~or eligible aviation business~~ to agree
40 that (1) the eligible business ~~or eligible aviation business~~ shall be subject
41 to post audit under the legislative post audit act, and amendments thereto,
42 (2) the eligible business ~~or eligible aviation business~~ shall pay audit ex-
43 penses and (3) the eligible business ~~or eligible aviation business~~ shall not

1 limit access to information required under the legislative post audit act,
2 and amendments thereto.

3 (m) The secretary shall report to the state finance council on any new
4 agreements entered into between the secretary and an eligible business
5 ~~or eligible aviation business~~ pursuant to this section.

6 (n) No new eligible project ~~or eligible aviation project~~ shall be ap-
7 proved for financing under the provisions of this section on or after July
8 1, 2013.

9 Sec. 2. K.S.A. 2008 Supp. 74-50,136 is hereby repealed.

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