

Approved: Jan. 27, 1994  
Date

## MINUTES OF THE SENATE COMMITTEE ON ASSESSMENT AND TAXATION.

The meeting was called to order by Chairperson Audrey Langworthy at 11:07 a.m. on January 26, 1994 in Room 519-S of the Capitol.

Members present: Senator Langworthy, Senator Tiahrt, Senator Martin, Senator Bond, Senator Corbin, Senator Feleciano Jr., Senator Hardenburger, Senator Lee, Senator Reynolds, Senator Sallee

Committee staff present: Tom Severn, Legislative Research Department  
Chris Courtwright, Legislative Research Department  
Bill Edds, Revisor of Statutes  
Don Hayward, Revisor of Statutes  
Elizabeth Carlson, Committee Secretary

Conferees appearing before the committee: Mikel Filter, Kansas Inc.  
Tom Riederer, Johnson County partnership

Others attending: See attached list

## APPROVAL OF MINUTES

Senator Tiahrt moved to approve the minutes of January 21, 1994. The motion was seconded by Senator Hardenburger. The motion carried.

## SUBCOMMITTEE APPOINTED

Senator Langworthy appointed Senators Tiahrt, Feleciano and Reynolds to serve on a subcommittee to discuss SB 480 and SB 503. The meeting will be held on Friday, January 28, 1994, in Room 519-S at 11:00 a.m. or upon adjournment.

## SB 461--TAX INCENTIVES FOR CERTAIN SERVICE SECTOR FIRMS

Mikel Filter, Senior Research Analyst, Kansas Inc., appeared to explain and support SB 461. She read from a prepared paper. (Attachment 1) This bill would make export-oriented service sector firms eligible for incentives under the state's High Performance Firms Incentives Program, and make export-oriented service sector firms a qualified investment under the Kansas Certified Venture Capital Companies statute. The bill would also clarify the existing Enterprise Zone legislation. Her testimony explained the amendments contained in the bill and she said they are being recommended by Kansas Inc.

A question was asked of Ms. Filter if vendors could sell to government agencies or other governments and be included in this bill. She replied not at this time, but she thought it should be amended to include government agencies and other governments. One section clarifies the terms of Enterprise Zone legislation. They are trying to clarify what is and what is not retail. She gave examples of different companies who would be included under these terms.

Tom Riederer, President, Lenexa Chamber of Commerce, and representing the Johnson County Partnership, spoke in support of SB 461. (Attachment 2) He said this bill will make positive changes to our economic development legislation and increase our competitiveness as a state in today's challenging economic environment. He suggested that the qualifying language in Section I of SB 461 be changed to allow a qualifying firm to be one that employs not more than 2,000 full-time equivalent employees instead of 500 which is currently in the bill.

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON ASSESSMENT AND TAXATION, Room 519-S  
Statehouse, at 11:07 a.m. on January 26, 1994.

At this time the fiscal impact of the bill is not known.

The meeting adjourned at 11:55 a.m.

The next meeting is scheduled for January 27, 1994.

DATE: Jan 26, 1994

NAME (PLEASE PRINT)	ADDRESS	COMPANY/ORGANIZATION
Bill Thompson	Topeka	KDOCH
Tom Riedorse	Leavenworth	Leavenworth Chamber
Steve Stotts	Topeka	KDOR
MARK CIARDULLO	TOPEKA	KDOR
MARK A. BURGHART	"	KDOR
Margie Pressgrove	"	KAMI
Steve Kelly	Topeka	KDOCH
David Bybee	"	"
Michelle Clum	Topeka	atly Jon Small
Frank Niles	✓	KDOCH
Ken Peterson	"	KS Petroleum Council
Steve Goodhue	Olathe	Olathe Chamber of Commerce
Jack Graves	Wichita	P.H. Easter "Opk"
Bob Corkins	Topeka	KCCI
Chris Beal	Kansas City Area	Greater KC Chamber
Gena Marland	Overland Park	OP Chamber of Commerce

# **SENATE COMMITTEE ON ASSESSMENT AND TAXATION**

## **THE KANSAS LEGISLATURE**

### **S.B. 461**

#### **PROPOSED AMENDMENTS TO:**

High Performance Firms Incentives Program  
1993 Supp. K.S.A. 74-50,131

Kansas Venture Capital Companies  
K.S.A. 74-8307

Kansas Enterprise Zone Act  
K.S.A. 74-50,114

#### **TESTIMONY OF:**

Mikel Filter  
Senior Research Analyst  
Kansas Inc.

**January 26, 1994**

*Senate Ass't & Information*  
*1-26-94*  
*Attachment # 1*

Thank you for the opportunity to testify before you today concerning S.B. 461. This bill would make export-oriented service sector firms eligible for incentives under the state's High Performance Firms Incentives Program (1993 S.B. 73), and make export-oriented service sector firms a qualified investment under the Kansas Certified Venture Capital Companies statute. The bill would also clarify the existing Enterprise Zone legislation.

## **Background**

As you will recall, Kansas Inc. released the State's new economic development strategy, "A Kansas Vision" in February of 1993. To implement the strategy, Kansas Inc. assembled six "Action Planning Committees." These committees are made up of legislators, cabinet officials, community leaders, men and women with expertise in business, education, technology, and finance, and the state's best economic development professionals.

During the 1993 Interim Session, Kansas Inc. worked with the Business Tax and Incentives Committee and legislative leadership to develop a collection of recommendations to improve the accountability and targeting of economic development tax incentives.

In December, the Kansas Inc. Board of Directors voted to support the Action Planning Committee's recommendations as part of the 1994 Kansas Inc. legislative agenda to implement "A Kansas Vision."

Charles Warren and I presented a paper and testimony to this Committee proposing that the state extend tax incentives to export-oriented service sector firms, as recommended by Kansas Inc.'s Action Planning Committee on Business Tax & Incentives. Subsequently, upon your request, we drafted amendments to both the High Performance Firms Incentives Program (S.B. 73) and the Kansas Certified Venture Capital Companies statutes to allow export-oriented service sector firms access to those programs.

On January 11, 1993, Kansas Inc. requested introduction of the those two bills and one additional bill amending the Kansas Enterprise Zone Act. This Committee introduced all three bills as S.B. 461.

My testimony will explain the amendments contained in this bill which are being recommended by Kansas Inc. I will first speak to the recommended amendment to S.B. 73. Second, I will cover the proposed amendment to the Kansas Certified Venture Capital Companies statute. And third, I will explain the recommended amendments to the Kansas Enterprise Zone Act, which will cover two issues: (1) to will clarifying the existing statutory definitions found in the Act, and (2) Kansas Inc.'s recommendation that an additional amendment be made to the E-Zone Act.

I will be happy to answer questions after each major section.



Kansas Inc. and the Action Planning Committee on Business Tax and Incentives support the following provisions of S.B. 461:

1. Expand eligibility under the High Performance Firms Incentives Program to include export-oriented service sector firms and other non-manufacturing export-oriented firms.

When determining the allocation of economic development resources, it is important to use a decision making process based on established theory. The **basic industry theory** or the **new dollars theory** has been used in the past by Kansas lawmakers to justify targeting economic development incentives toward manufacturers. The premise behind the basic industry theory is that *firms that bring new dollars into the state by exporting Kansas products are the real wealth producers and therefore have a higher industry value than the industries that simply circulate Kansas dollars in and around Kansas. In a word, those firms bringing new dollars into the state merit economic development incentives.*

This same argument can also be used to justify affording tax incentives to export-oriented service sector firms. Services exported outside the state of Kansas bring significant new wealth to the state. In terms of employment alone, approximately 37,000 jobs in Kansas are dependent on the income generated by service sector exports (Jarvin Emerson, 1989).

Our problem in Kansas has not been in recognizing the value of our export-oriented service sector firms, but rather in writing workable tax law that would (1) identify specific service sector firms meeting the basic industry or new dollar criteria; and that would (2) be administratively feasible for the Department of Revenue to process.

We don't have these problems in the case of the High Performance Firms Incentives Program because (1) the program is administered by the Department of Commerce & Housing, and therefore doesn't need to be written into tax law, and (2) the number of program participants is very low when compared with other incentives programs.

Section 1 of the S.B. 461 provides the Department of Commerce & Housing with a method to determine whether applicants for the High Performance Firms Incentive Program are indeed export-oriented service sector firms. By analyzing each applicant's customer base, Commerce can measure the degree to which the firm contributes to the state's economy.

The extent to which the applicant either

(1) exports its services, or

(2) provides substitutes for imports

determines whether the firm will qualify for the S.B. 73 incentives.

This test begins with three broad categories of businesses that the Bureau of Economic Analysis recognizes as service-related enterprises (Attachment A). Each of these sectors actually encompasses a sometimes diverse group of sub-industries that are looked at individually with this qualifying method. The three broad categories are: (1) Transportation, Communication, and Utilities, (2) Finance, Insurance, and Real Estate, and (3) Services.

To qualify for S.B. 73 incentives a firm must:

- 1)    a)    Be among the eligible firm categories, and  
      b)    demonstrate that 51% of its sales are made to commercial customers out-of-state, or to Kansas manufacturers, or a combination of both.  

or
- 2)    a)    Be among the eligible categories, and  
      b)    Be a corporate headquarters or back-office operation providing direction, management, or administrative support for transactions made by a national or international corporation.

If a firm meets these qualifications, the applicant would still be required to meet the same high performance standards currently applied to manufacturing firms before receiving any benefits.

Adding qualifying export-oriented service sector firms is in keeping with the overall mission of the state's economic development strategy. Kansas Inc. urges the Committee to report this portion of the bill favorably.

We also request the following language be added to further clarify the intent of this bill:

On line 26, after the words "headquarters of regional headquarters," add the words "or back-office operations."

**Kansas Inc. and the Action Planning Committee on Business Tax and Incentives support the following provisions of S.B. 461:**

**2.    Expand the eligibility for venture capital tax credits to allow investments in export-oriented service sector firms.**

Current legislation restricts Kansas Certified Venture Capital companies from investing in any service sector firm. The Kansas Department of Commerce & Housing confirms that over the past several years, there have been a number of instances when this

restriction has prohibited Kansas Certified Venture Capital Companies from investing in otherwise viable and potentially highly successful export-oriented service sector firms.

The expansion of statutory language to allow export-oriented service sector firms to qualify as investments under this Act would allow us to address the needs of these firms that currently fall through the cracks of the assistance network.

This amendment would use the same method for determining which firms meet the criteria of an export-oriented services sector firm as is used for SB 73.

**Kansas Inc. also supports the following provisions of S.B. 461:**

**3. Clarifying existing firm classifications used to determine eligibility under current Enterprise Zone legislation.**

On January 11, Kansas Inc. gave introductory testimony and requested a bill introduction to solve a problem Senator Langworthy brought to our attention regarding the newly reconstructed Enterprise Zone statutes adopted by the 1992 Legislature. She reported that export-oriented service sector firms are being denied access to sales tax exemptions under current E-Zone statutes because of the wording of the statute. Bill Thompson, Director of the Industrial Development Division of the Department of Commerce & Housing confirms that the present wording is a serious problem.

According to Revenue analysts, an engineering firm such as Black and Veatch, a medical laboratory providing services for insurance companies, or even a Federal Express terminal would be classified as a retailer and thus would not be eligible for sales tax exemption unless they located in a community of 2,500 or less. Clearly, it was not the intent of the original authors to exclude these type of export-oriented service sector firms.

During that introductory testimony on January 11th, I told the Committee that we would continue to hone the proposed new language and then request an amendment at a subsequent bill hearing. After extensive discussion between Kansas Inc., the Department of Commerce & Housing, the Department of Revenue, and legislators who were involved in the 1992 reconstruction of the E-Zone legislation, we feel we have developed language that reflects (1) the true intent of the original authors, and (2) will also be administratively feasible.

We recommend that the proposed amendment in Section 3 of S.B. 461 be amended to read as presented in Attachment B.

The amendment begins by better defining the term "retail." To do this, we have started with those firms which are subject to retail sales tax and have added those type of firms known to have been considered appropriate by the original authors.



We have clarified the "non-manufacturing" definition to include headquarters of firms that have in the past been incorrectly classified as retail firms.

As I mentioned, Kansas Inc., the Departments of Commerce and Revenue, as well as legislators who originated the 1992 legislation have been meeting over the course of the last month, and we feel these amendments will ensure that the original intent of the authors is carried out.

### **New Proposed Amendment to Existing E-Zone Legislation**

Subsequent to bill introduction, discussions between Kansas Inc., the Department of Revenue, and Bill Thompson of the Industrial Development Division of the Department of Commerce resulted in our requesting that the Kansas Enterprise Zone Act be further amended to make lessors eligible for sales tax exemption on purchases made in conjunction with new building construction which will be leased to a qualifying job creating entity for a period of at least 5 years. Ron Mittag, Economic Development Director, for the City of Shawnee, and Tom Riederer, President of the Lenexa Chamber of Commerce will speak to this need later in this hearing and Bill Thompson, from the Department of Commerce is also available for questions.

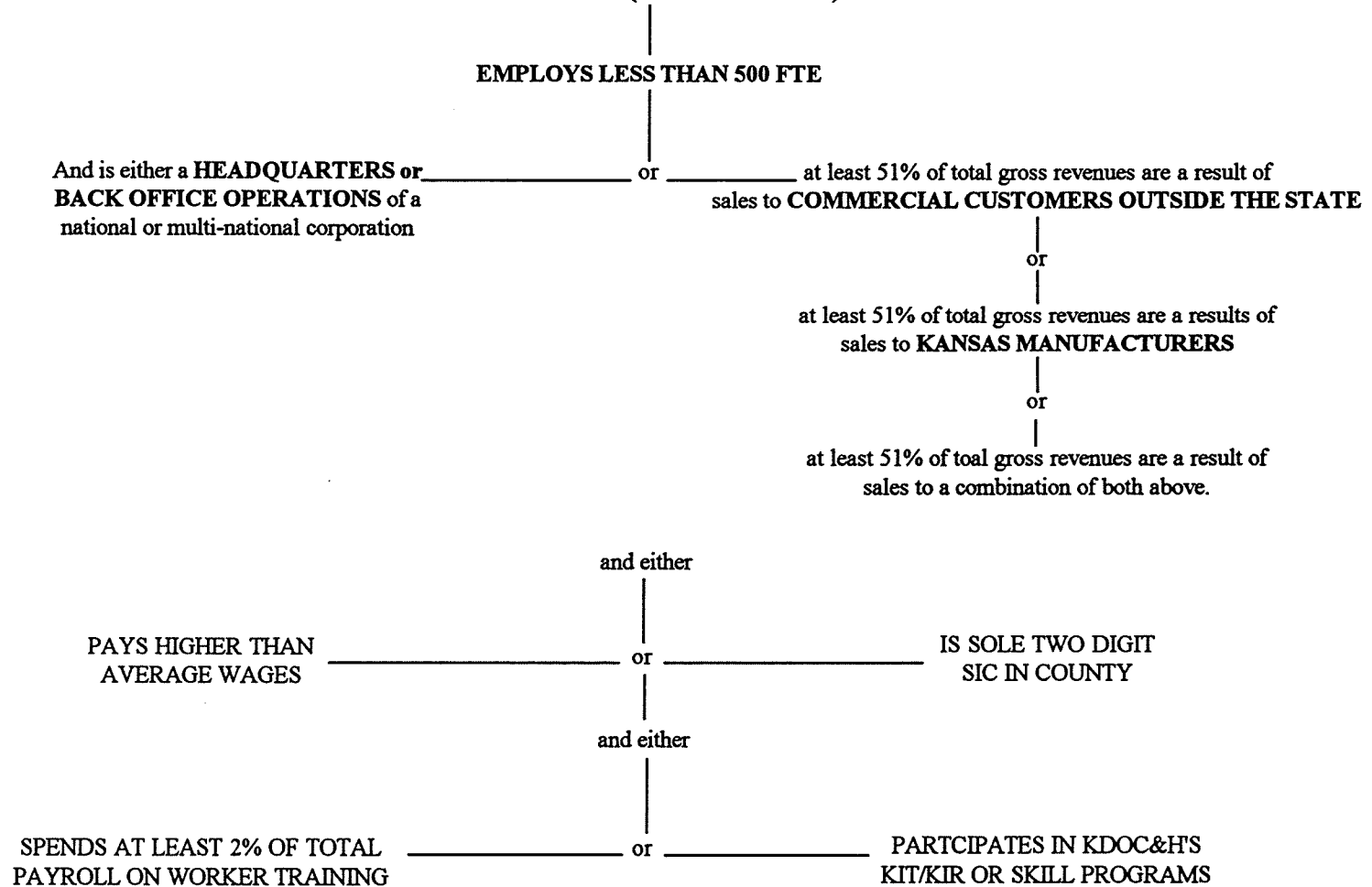
The proposed amendment would effect K.S.A. 74-50,115 by adding the following paragraph:

"(d) Any person constructing, reconstructing, remodeling, or enlarging property which will be leased for a period of 5 years or more to a business that would be eligible for a sales tax exemption hereunder if such business had constructed, reconstructed, enlarged, or remodeled such property itself shall be entitled to the sales tax exemptions property under the provisions of subsection (ee) of K.S.A. 1993 Supp. 79-3606a, and amendments thereto.

### **Conclusion**

I respectfully urge the Committee to report favorably on S.B. 461 with the amendments recommended by Kansas Inc. Thank you for your attention. I'll now stand for further questions.

Transportation/Communications/Utilities (SIC 40-49)  
Finance/Insurance/Real Estate (SIC 60-67)  
Services (SIC 70-89)



**74-50,114. Same; definitions. As used in K.S.A. 74-50,113 through 74-50,117 and amendments thereto:**

- (a) "Business" means any manufacturing business or nonmanufacturing business.
- (b) "Full-time employee" means a person who is employed by a business or retail business to perform duties in connection with the operation of the business or retail business on:
  - (1) A regular, full-time basis;
  - (2) a part-time basis, provided such person is customarily performing such duties at least 20 hours per week throughout the taxable year; or
  - (3) a seasonal basis, provided such person performs such duties for substantially all of the season customary for the position in which such person is employed. The number of full-time employees during any taxable year shall be determined by dividing by 12 the sum of the number of full-time employees on the last business day of each month of such taxable year. if the business or retail business is in operation for less than the entire taxable year, the number of full-time employees shall be determined by dividing the sum of the number of full-time employees on the last business day of each full calendar month during the portion of such taxable year during which the business was in operation by the number of full calendar months during such period.
- (c) "Manufacturing business" means all commercial enterprises identified under the manufacturing standard industrial classification codes, major group 20 through 39.
- (d) "Metropolitan county" means the county of Douglas, Johnson, Leavenworth, Sedgwick, Shawnee or Wyandotte.
- (e) "Nonmanufacturing business" means any commercial enterprise other than a manufacturing business or a retail business. **Nonmanufacturing business shall also include the corporate headquarters of an enterprise, regardless of the firm's classification as a retail business as set forth in subparagraph (g), if that facility for which the sales tax exemption certificate is issued facilitates the creation of at least 20 new full-time positions.**
- (f) "Nonmetropolitan region" means a region established under K.S.A. 74-50,116 and is comprised of any county or counties which are not metropolitan counties.
- (g) "Retail business" means ~~any commercial enterprise primarily engaged in the sale at retail of goods or services, or both~~ **(1) any commercial enterprise primarily engaged in the sale at retail of goods or services taxable under the retailers' sales tax act, K.S.A. 79-3601 et seq. and amendments thereto; (2) any service provider set forth in K.S.A. 17-2707; (3) any bank, savings and loan or other lending institution; (4) any commercial enterprise whose primary business activity includes the sale of insurance; and (5) any commercial enterprise deriving its revenues directly from noncommercial customers in exchange for personal services such as, but not limited to, barber shops, beauty shops, photographic studio, and funeral services.**
- (h) "Secretary" means the secretary of the Kansas department of commerce.
- (i) "Standard industrial classification code" means a standard industrial classification code published in the Standard Industrial Classification manual, 1987, as prepared by the statistical policy division of the office of management and budget of the office of the president of the United States of America.
- (j) **"Corporate Headquarters" means a facility where principal officers of the corporation are housed and from which direction, management, or administrative support for transactions is provided for a corporation or division of a corporation.**

History: L. 1992, Ch 202, Section 2, July 1

**17-2707. Professional corporation law; definitions.** As used in this act, unless the context clearly indicates that a different meaning is intended, the following words mean:

(a) "Professional corporation," a corporation organized under this act.

(b) "Professional service," the type of personal service rendered by a person duly licensed by this state as a member of any of the following professions, each paragraph constituting one type:

(1) A certified public accountant;

(2) An architect;

(3) An attorney-at-law;

(4) A chiropractor;

(5) A dentist;

(6) An engineer;

(7) An optometrist;

(8) An osteopathic physician or surgeon;

(9) A physician, surgeon or doctor of medicine;

(10) A veterinarian;

(11) A podiatrist;

(12) A pharmacist;

(13) A land surveyor;

(14) A certified psychologist;

(15) A specialist in clinical social work;

(16) A registered physical therapist;

(17) A landscape architect;

(18) A registered professional nurse.

(c) "Regulating board," the board or state agency which is charged with the licensing and regulation of the practice of the profession which the professional corporation is organized to render.

(d) "Qualified person":

(1) Any natural person licensed to practice the same type of profession which any professional corporation is authorized to practice; or

(2) the trustee of a trust which is a qualified trust under subsection (a) of section 401 of the internal revenue code of 1954, as amended, or of a contribution plan which is a qualified employee stock ownership plan under subsection (a) of section 409A of the internal revenue code of 1954, as amended.

**History:** L. 1965, ch. 157, § 2; L. 1972, ch. 63, § 1; L. 1976, ch. 109, § 1; L. 1980, ch. 242, § 27; L. 1981, ch. 104, § 1; July 1.

**Senate Committee on Assessment and Taxation**

**Senator Audrey Langworthy, Chair**

**S.B. 461**

**Testimony of:**

**Ron Mittag  
Director of Economic Development  
City of Shawnee**

**Tom Riederer  
President  
Lenexa Chamber of Commerce**

**Representing the Johnson County Partnership**

**January 26, 1994**

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We appreciate the opportunity today to provide our support for S.B. 461, which will make positive changes to our economic development legislation and increase our competitiveness as a state in today's challenging economic environment.

We are here today as representatives of the Johnson County Partnership. The Johnson County Partnership is a cooperative association of ten economic development organizations which have been working together for the past three years to actively market Johnson County, Kansas as a great place to do business. Our Partnership members are the City of Shawnee, the Lenexa Chamber of Commerce, the Olathe Chamber of Commerce, the Overland Park Chamber of Commerce, the City of DeSoto, the Johnson County Industrial Airport, the Johnson County Economic Research Institute, the Southwest Johnson County Development Corporation, the Merriam Chamber of Commerce, and the Development & Retention Council of Northeast Johnson County.

We generally support the legislative changes suggested by Kansas Inc. We believe there are primarily three changes that need to be considered: (1) Expand the eligibility of firms eligible for economic incentives to include export-oriented service sector businesses; (2) Allow the sales tax exemption within the enterprise zone to be used by the building developer in a build-to-suit lease arrangement; and (3) Increase the size of the qualifying firm to one employing no more than 2,000 full-time equivalent employees.

Service sector firms that export their services outside the state or provide services to Kansas manufacturers (in effect, substituting for imports) are beneficial. They create jobs and generate substantial wealth for the state of Kansas. We need to encourage development of corporate/regional headquarters, back office operations, etc. within Kansas.

The current economic climate makes a build-to-suit lease arrangement a better option for businesses locating or expanding in Kansas. The purpose of the sales tax exemption is to lower the initial cost to businesses and to stimulate investment. By allowing the developer to utilize the sales tax exemption the business will ultimately benefit through lower lease rates.

We would also suggest that the qualifying language in Section 1 of S.B. 461 be changed to allow a qualifying firm to be one that employs not more than 2,000 full-time equivalent employees.

On behalf of the Johnson County Partnership, we would again like to thank you for this opportunity to provide our comments and support for S.B. 461. We respectfully request the Committee support these changes. We would be happy to answer any questions that you might have.