Approved: January 31, 2008

Date

MINUTES OF THE SENATE ASSESSMENT AND TAXATION COMMITTEE

The meeting was called to order by Chairman Barbara Allen at 10:35 A.M. on January 29, 2008 in Room 519-S of the Capitol.

Senator Hensley was absent.

Committee staff present:

Gordon Self, Office of Revisor of Statutes Chris Courtwright, Kansas Legislative Research Department Scott Wells, Office of Revisor of Statutes Ryan Hoffman, Kansas Legislative Research Department Judy Swanson, Committee Assistant

Conferees appearing before the committee:

Dave Kerr, Secretary, Kansas Department of Commerce David Bybee, HPIP Program Manager, Kansas Department of Commerce Kathleen Smith, Tax Specialist, Kansas Department of Revenue

Others attending:

See attached list.

Richard Cram, Kansas Department of Revenue (KDOR), requested introduction of a tax incentive package that would create the Kansas investment credit act and the Kansas jobs credit act. Senator Donovan moved to introduce the requested bill. Senator Jordan seconded the motion, and the motion carried.

Chairman Allen announced there would be a Joint Senate Assessment & Taxation Committee and Senate Commerce Committee hearing on Friday, February 1, upon adjournment of the Senate, in Room 123-S, to hear the newly introduced bill. It was noted Senator Lee has another committee meeting which conflicts with the joint hearing.

Dave Kerr, Secretary, Kansas Department of Commerce, presented an overview on the Tax Incentive Package proposal. (Attachment 1) The tax incentive package objectives are to establish a selectively applied tax credit cash refund program, to establish the creation of opportunity zones, to replace existing tax credit programs with streamlined investment tax credit and job creation credit plans, and to simplify qualified investment calculation for investment-based credits. Secretary Kerr explained each objective.

The establishment of a selectively applied tax credit cash refund program is a new concept. It is set up for companies that have not previously been able to use their tax credits. Outstanding tax credits earned, but that cannot be used to date, are about \$300 to \$450 million. This program would be applied on a prospective basis only (12/31/07 and after). The total amount of appropriations would be capped at \$10 million annually.

The establishment of opportunity zones to enhance investment and job creation credits mirrors the provisions of 2007 <u>**HB 2170**</u>. In addition, the proposal would include Opportunity Zones created in response to a disaster area designation.

The incentive package would replace existing tax credit programs with streamlined investment tax credit and job creation credit plans. Qualified investments would equal or exceed \$50,000 for businesses in Opportunity Zones, and equal or exceed \$300,000 for businesses outside of Opportunity Zones. The new proposal would replace Enterprise Zone incentives, High Performance Incentive Program (HPIP), and the business and job development credits.

Secretary Kerr said the proposal would simplify qualified investment calculation for investment-based credits. A qualified investment would have to remain in service through the last day of the year, and recertification would not be required for investment or job credits.

CONTINUATION SHEET

MINUTES OF THE Senate Assessment and Taxation Committee at 10:35 A.M. on January 29, 2008 in Room 519-S of the Capitol.

Secretary Kerr, in response to Senator Apple, said that Miami County would fall outside the realm of this bill, and this issue would need to be addressed individually.

David Bybee, Program Manager, Kansas Department of Commerce, reviewed the current HPIP program. (Attachment 2) HPIP is an incentive program, not an entitlement program. It was structured to reward businesses that have satisfied program objectives and is not available to businesses in which tax benefits have no impact on their decision about where to locate. HPIP does not require job creation, but new job creation is typically part of the kind of major investment that generates the largest benefits from the program. All participants must pay an above-average wage and invest in employee training. Mr. Bybee explained the general flow and timeliness of HPIP activities.

Kathleen Smith, Tax Specialist, Kansas Department of Revenue (KDOR), gave an overview of the Business and Job Development Credit that is currently available. (Attachment 3) She reviewed the qualifications and credit amounts for the Job Expansion and Investment Credit Act.

A credit is allowed as a direct tax credit against the income tax of any Kansas taxpayer in a Kansas Enterprise Zone when an investment in a qualified business facility is made, and a specified minimum number of qualified business facility employees are hired as a direct result of that investment.

Being no further business, the meeting was adjourned at 11:13 a.m. The next Committee meeting will be held January 30.

SENATE ASSESSMENT & TAXATION COMMITTEE

GUEST LIST

DATE: Jar. 29, 2008

V	
NAME Ready	REPRESENTING
Tin Sullingen	XC STAR
Michelle Leterson	Capitol Strategies
Jason Barland	Pinegar Smith + ASSEC.
Esb Corkins	Kansasliberty. Com
DINA FISK	VERIZON
J. Kunt Eckles	O.P. Chamber of Commone
Richert Corn	KOOR
David R. Corbin	KOOR
Ben Cleeves	DOIS
David Byliee	Dept of Commerce
Lathleen Smith	LOOR
Mark Desett	KNEA
Mark Tallingin	KASB
Lesch	PMPA of Ks
Leslie Kaufman	Ks Co-op Council
Elatha Clar Shorth	KMHA
Sandia Braden	KUPL
natalie Haag	Surity Berefit Corp.
John Frederick	Ils Grain + thed Assil
Sharrival Stafford	Klanny & Associates
Kane Trelaus-	Karri T.
Dan Konber	Kansas, Inc.

Mortee Carpenter Kansas Chosonber

2008 LEGISLATIVE PROPOSAL

TAX INCENTIVE PACKAGE

Tax Incentive Package Objectives:

- 1. Establish a Selectively Applied Tax Credit Cash Refund Program
- 2. Establish the Creation of Opportunity Zones
- 3. Replace Existing Tax Credit Programs with Streamlined Investment Tax Credit and Job Creation Credit Plans
- 4. Simplify Qualified Investment Calculation for Investment-Based Credits

1. Establish a Selectively Applied Tax Credit Cash Refund Program

- Applied on a prospective basis only (12/31/07 and after)
- Total amount of appropriation capped at \$10M annually
- Companies may apply for a select number of a discounted cash refund of up to 40% of earned credits
- If awarded and a discounted cash refund is accepted, the remaining amount of company's tax credits would be forfeited
- Application made through Commerce with selection criteria developed through rules & regulations
- Commerce submits annual report to Legislature, detailing the company and total credit awarded

- 2. Establish the Creation of Opportunity Zones to Enhance Investment and Job Creation Credits
 - Mirrors Provisions of HB 2170
 - Established by Secretary of Commerce
 - Comprised of at least one county
 - Economically disadvantaged
 - Outside of designated metropolitan county or micropolitan statistical areas
 - Opportunity Zone Can Be Created in Response to a Disaster Area Designation

- 3. Replace Existing Tax Credit Programs with Streamlined Investment Tax Credit and Job Creation Credit Plans
 - Investment Tax Credit Set at 10% of qualified investment
 - For-profit businesses
 - Identified under specific NAICS codes or HQ/ancillary support operation
 - Qualified investment
 - Equal or exceeds \$50K for businesses in Opportunity Zones
 - Equal or exceeds \$300K for businesses outside of Opportunity Zones
 - Average wages must exceed regional NAICS code wages

- 3. Replace Existing Tax Credit Programs with Streamlined Investment Tax Credit and Job Creation Credit Plans
 - Job Credit Creation
 - \$3,500 per new employee with a minimum of 2 new jobs created in an Opportunity Zone
 - \$1,500 per new employee with a minimum of 5 new employees outside of an Opportunity Zone
 - \$1,500 per new employee with a minimum of 20 employees for HQ/ ancillary support operations outside of an Opportunity Zone
 - Investment Tax Credit and Job Creation Credit Plans Replace:
 - Enterprise Zone Incentives
 - High Performance Incentive Program (HPIP)
 - and the Business and Job Development credits

- 4. Simplify Qualified Investment Calculation for Investment-Based Credits
- Qualified investment placed in service during taxpayer's tax year
 - Investment must remain in service through the last day of the year
 - Recertification not required for investment or job credits

Key Points about the High Performance Incentive Program (HPIP)

- 1) HPIP is an incentive program, not an entitlement program. Business demonstrate foreknow-ledge by pre-identifying anticipated investment before locking in the scope of investment.
- 2) HPIP was structured to reward businesses that have satisfied program objectives. Benefits cannot be claimed based on promises of <u>future</u> performance.
- 3) HPIP is not available to businesses in which tax benefits have no impact on their decision about where to locate (e.g., retailers, mining, agriculture, construction, not-for-profits).
- 4) HPIP does not require job creation, but new job creation is typically part of the kind of major investment that generates the largest benefits from the program.
- 5) All participants must pay an above-average wage and invest in employee training. Some must also focus on out-of-state sales to pull new dollars into the state's economy.

General Flow of HPIP Activities

CIPD

Capital Investment Project Description PR-70b

Request for Project Exemption Certificate HPIP Application Documents HPIP Certification Letter Kansas Income Tax Filing Future Kansas Income Tax Filings

Pre-identify Anticipated Investment to Commerce Request sales tax exemption from Revenue Submit application to Commerce, documenting satisfaction of requirements to qualify the worksite during the investment spending timeframe.

Qualification Requirements
NAICS Category
Above-Average Wage
Employee Training
Sources-of-Revenues (sometimes)

Commerce issues certification letter to Revenue, verifying worksite satisfaction of HPIP qualification requirements.

On income tax filing, claim HPIP credits for pre-identified investment spending, related to assets that were placed into service during that tax year, if the spending occurred while the investment worksite was qualified.

Carry-forward unused credits up to 10 years, and use those credits in any year in which the worksite re-qualifies for HPIP for more than half the year.

<u>Benefits</u>	Investment Tax Credit	Sales Tax Exemption	Training Tax Credit	Priority Consideration
	10% of qualifying investment over \$50,000 10-year carry-forward (work- site must re-qualify)	Must be requested before spending occurs	Capped at \$50,000 No carry-forward	While its worksite is HPIP- qualified, the firm receives priority consideration from other state business programs

Requirements for worksite qualification	(investment must also be pre-identified to qualify for credits):
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Worksites in eligible non-manufacturing NAICS categories (not including retailing, agriculture, mining, construction, or not-for-profits)

Only wage & training requirements apply to manufacturing NAICS categories, and to head-quarters or back-office worksites of (multi)national organizations in any NAICS category

Pay an above-average wage	Provide Employee Training	Sources-of-Revenues
 based on major NAICS category, number of worksite employees, and worksite location updated in Q3 each calendar year fallback qualification based on alternative wage threshold of 1 ½ times state-wide average wage 	 spend 2% of wages on eligible training, or participate for at least 3 months in a KIT or KIR or IMPACT workforce training project 	- more than half of worksite revenues must be generated from sales to Kansas manufacturers and/or out-of-state commercial/ governmental organizations

Kansas Department of Commerce

1/29/2008 file = HPIPflow4.xls

RE: HPIP Quarterly Performance Report through 12/31/07 - based on when the certification paperwork was processed

IMPORTANT NOTE: Presentation of the following information is based on the period in which the HPIP certification paperwork was processed, but the company's certification period may begin anytime within the statutory timeframe during which the Kansas Department of Revenue will allow an amended tax filing (normally up to 3 prior tax years).

CAUTION: The sales tax exemption is based on estimates, and is inflated to the degree businesses decide to acquire materials for their capital investment from outside

the state

		initial	re-certi-		existing					estimated	estimated				amount of		companies	
		certifi-	fication	total of	employes					sales tax	sales tax		number of		indepen-		receiving	match S
	"first-	cations	of a pre-	all certi-	of all		antici-	anticipated	potential	exemption	exemption	cer	tifications usi	ng:	dent train-		match \$	claimed
	time"	at a sec-	viously	fications	worksites	weighted	pated	increase	invest-	available	available	train-	inde-		ing which	training	for con-	for con-
*	certifi-	ondary	certified	& re-cer-	when	average	job	in capital	ment tax	through	thru E-Zone	ing pro-	pendent		exceeds 2%	tax credit	sulting	sulting
	cations	location	worksite	tifications	certified	wage	creation	investment	credit	<u>HPIP</u>	or IRB's	grams	training	both	of payroll	earned	services	services
FY94	2	0	0	2	391	27,643	26	23,500,000	2,340,000	0	764,000	1	1	0	138,128	50,000	0	0
FY95	13	0	0	13	2,262	32,117	279	41,666,166	4,111,617	588	1,300,680	3	9	1	479,492	314,822	2	25,000
FY96	31	1	9	41	9,036	44,383	479	285,956,593	28,415,659	2,550,312	4,497,541	13	26	2	2,627,754	799,049	7	75,000
FY97	17	2	15	34	8,118	41,126	2,567	307,176,293	30,582,629	356,230	7,850,260	14	19	1	2,663,656	543,805	1	12,500
FY98	15	0	24	39	10,425	43,879	979	187,757,821	18,630,782	831,667	4,154,699	14	23	2	4,308,949	818,062	2	25,000
FY99	25	4	33	62	24,509	41,236	1,799	542,387,041	53,963,704	3,072,518	6,856,692	21	38	3	7,770,039	1,104,546	1	12,500
FY00	16	0	35	51	31,897	46,556	1,245	593,172,618	58,992,262	8,079,497	4,907,361	20	30	I	9,477,644	1,044,255	0	0
FY01	35	0	49	84	44,012	51,767	1,920	609,690,828	60,529,083	2,482,790	9,594,626	30	52	2	9,791,661	1,819,318	0	0
FY02	26	0	44	70	18,972	40,280	947	569,261,268	56,571,128	10,650,952	4,113,679	26	41	3	5,919,185	1,340,190	0	0
FY03 Totals	28	2	70	100	37,783	45,111	1,381	515,397,524	51,079,752	3,619,755	7,178,543	35	60	5	8,452,698	2,178,667	0	0
FY04 Totals	33	0	60	93	21,683	55,093	13,263	2,019,913,424	201,581,343	4,997,667	30,939,167	37	55	1	8,244,629	1,878,488	0	0
FY05 Totals	35	6	99	140	50,697	192,101	4,200	1,834,810,655	182,866,065	7,630,676	18,778,508	65	74	1	11,758,240	2,224,941	0	0
FY06	35	2	99	136	36,960	not calc'd	1,257	1,228,768,682	122,196,868	11,281,332	8,650,001	64	70	2	21,528,478	2,541,486	0	0
FY07	34	1	104	139	44,020	not calc'd	2,786	1,964,928,633	195,797,863	11,278,934	20,992,706	63	72	4	6,268,125	2,573,633	0	0
FY08(Q1 & Q2)	14	0	51	65	33,112	not calc'd	639	2,126,056,650	212,280,665	24,520,428	4,414,108	28	37	0	7,635,745	1,184,323	0	0
()	0	0	0	0	0	<u>0</u>	0	<u>0</u>	0	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	0	<u>0</u>	0	0	0
Totals	359	18	692	1,069	373,877		33,767	12,850,444,196	1,279,939,420	91,353,346	134,992,571	434	607	28	107,064,423	20,415,585	13	150,000
Avg / Cert					350		32	12,020,996	1,197,324	85,457	126,279				100,154	19,098	0	140

BUSINESS AND JOB DEVELOPMENT CREDIT K.S.A. 79-32,153 et seq. and K.S.A. 79-32,160a

The purpose of the business and job development credit is to provide tax incentives throughout the state which encourage businesses to create new jobs through capital investment projects involving the building of new facilities or the expansion or renovation of existing facilities. There are two different acts within the Kansas statutes which provide an income tax credit for those businesses which make an investment and create jobs as a result of that investment. The acts are the Job Expansion and Investment Credit Act and the Kansas Enterprise Zone Act.

JOB EXPANSION AND INVESTMENT CREDIT ACT

First effective for all taxable years beginning after December 31, 1975.

OUALIFICATIONS

The business and job development credit is allowed as a direct tax credit against the income tax of any Kansas taxpayer if:

- · an investment in a qualified business facility is made, and;
- at least two qualified business facility employees are hired as a direct result of that investment.

There is no minimum amount of investment necessary to qualify for the credit, however, some investment must have been made. The taxpayer must qualify for the credit during the first taxable year that operations occur at the qualified business facility investment.

CREDIT AMOUNT

For an investment that began operations after December 31, 1992, the credit amounts are as follows:

Employee - \$100 for each qualified employee

Investment - \$100 for each \$100,000 of qualified investment

For an investment that began operations prior to December 31, 1992, the credit amounts are as follows:

LIMITATION OF CREDIT

The credit is limited to 50% of the tax on the qualified business facility income for the tax year, but in no case can the credit from all qualified investment and employees be more than 50% of the Kansas income tax in any one tax year.

The credit is recomputed each year for a 10 year period and no carryover of unused credit is allowed.

KANSAS ENTERPRISE ZONE ACT

First effective for all taxable years beginning after December 31, 1992.

OUALIFICATIONS

An enhanced business and job development credit is allowed as a direct tax credit against the income tax of any Kansas taxpayer when:

- · an investment in a qualified business facility is made, and;
- the business meets the definition of:
 - o manufacturing;
 - o nonmanufacturing; or
 - o retail, and
- a specified minimum number of qualified business facility employees are hired as a direct result of that investment.

There is no minimum amount of investment necessary to qualify for the credit, however, some investment must have been made. The taxpayer must qualify for the credit during the first taxable year that operations occur at the qualified business facility investment.

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MANUFACTURING

A manufacturing business must hire at least two qualified business facility employees as a direct result of the investment to qualify for the credit.

CREDIT AMOUNT

Located in a Kansas metropolitan county or any other area not designated as a nonmetropolitan region

Employee - \$1,500 for each qualified employee

Investment - \$1,000 for each \$100,000 of qualified investment

Located in a Kansas nonmetropolitan region

Employee - \$2,500 for each qualified employee

Investment - \$1,000 for each \$100,000 of qualified investment

NONMANUFACTURING

A nonmanufacturing business must hire at least five qualified business facility employees as a direct result of the investment to qualify for the credit.

CREDIT AMOUNT

Located in a Kansas metropolitan county or any other region not designated as a nonmetropolitan region

Employee - \$1,500 for each qualified employee

Investment - \$1,000 for each \$100,000 of qualified investment

Located in a Kansas nonmetropolitan region

Employee - \$2,500 for each qualified employee

Investment - \$1,000 for each \$100,000 of qualified investment

RETAIL

A retail business may qualify for the enhanced tax credit under the Kansas Enterprise Zone Act if the business is considered as:

- the business headquarters of a retail operation;
- an ancillary support operation of a retail business;
- Catalog and Mail-Order Houses identified under the Standard Industrial Classification code of 5961; or
- Prepackaged Software identified under the Standard Industrial Classification code of 7372.

To qualify for the enhanced income tax credit, a business headquarters must hire at least 20 qualified business facility employees as a direct result of the investment and must have begun operations after December 31, 1992.

Effective for all taxable years commencing after December 31, 1995, an ancillary support operation of a retail business or those establishments designated with a SIC code of 5961 or 7372 shall also qualify for the enhanced income tax credit if at least 20 qualified business facility employees are hired as a direct result of investment made.

If the retail business is not considered as the business headquarters, ancillary support, or is not identified under the Standard Industrial Classification code of 5961 or 7372, the retail business may claim the business and job development credit under the Job Expansion and Investment Credit Act of 1976. The retail business must hire two qualified business facility employees as a direct result of the investment to qualify for the credit.

CREDIT AMOUNT

Located in a Kansas metropolitan county or any other area not designated as a nonmetropolitan region

Employee - \$1,500 for each qualified employee

Investment - \$1,000 for each \$100,000 of qualified investment

Located in a Kansas nonmetropolitan region

Employee - \$2,500 for each qualified employee

Investment - \$1,000 for each \$100,000 of qualified investment

Assessment & Taxation
Date
Attachment #

3-21

Program Name	Statutory Reference	Description	Number of Filers	Tax Expenditure	Projected Jobs Created	Actual Jobs Created	Projected Jobs Retained	Actual Jobs Retained	Projected Capital Investment Generated	Actual Capital Investment Generated	Projected Revenue/Sales Generated	Actual Revenue/Sales Generated	Projected Payroll Generated	Actual Payroll Generated
High Performance Incentive Program	K.S.A. 74- 50,132	A qualified firm making a cash investment in the training and education of its employees can receive a credit equal to the portion of the investment in the training and education that exceeds 2% of the businesses total payroll costs.												
	K.S.A. 79- 32,160a(e)	A credit is available for those qualified firms that make an investment in a qualified business facility. The investment credit is 10% of the qualified business facility investment which exceeds \$50,000.												
Income Taxpayers		Sector 11- Agriculture, Forestry, Fishing and Hunting, Sector 21- Mining and Sector 23-Construction	8	\$367,102	263	165	0	-	\$24,560,608	\$0	-	-	_	-
		Sector 31-33-Manufacturing	58	\$13,070,950	834	1,313	1,758	-	\$187,904,280	\$92,662,964	-	-	-	-
		Sector 42-Wholesale	12	\$1,035,274	9	48	0	-	\$24,779,500	\$3,956,346	-	-	-	-
		Sector 44-45-Retail Trade, Sector 48- 49-Transportation and Warehousing, and Sector 51-Information	11	\$453,100	13	15	34	-	\$17,381,640	\$13,355,663	-	-		_
		Sector 52-Finance and Insurance, Sector 53-Real Estate and Rental and Leasing, Sector 55-Management of Companies and Enterprises, and Sector 56-Administrative and Support and Waste Management	11	\$3,531,764	94	120	0	-	\$1,008,534,000	\$5,909,784	-	-	-	_
****		Sector 54-Professional, Scientific, and Technical Services	10	\$2,141,368	3:	3 11)-	\$4.260,000	£220.075				
		Sector 61-Educational Services, Sector 62-Health Care and Social Assistance, and Sector 81-Other Services	7						\$4,360,092 \$5,828,000			-	-	-
Total High Performance														
Incentive Program Credits	-		117	\$20,883,763	2,10	1,680	1,792	! -	\$1,273,348,120	\$116,114,832		-	-	-

Program Name	Statutory Reference	Description	Number of Filers	Tax Expenditure	Projected Jobs	Actual Jobs		Actual Jobs	Projected Capital Investment	Actual Capital Investment	Projected Revenue/Sales	Actual Revenue/Sales	Projected Payroll	Actual Payroll
r rogram (vanie	Kelerence	Description	riiers	Expenditure	Created	Created	Retained	Retained	Generated	Generated	Generated	Generated	Generated	Generated
Business and Job Development Credit	K.S.A. 79- 32,153	Any taxpayer that invests in a qualified business facility and hires at least two employees as a result of that investment may be eligible for an investment tax credit of \$100 for every \$100,000 of investment made and a job creation tax credit of \$100 for every qualified business facility employee.												i,
	K.S.A. 79-	Any taxpayer that meets the definition of business in K.S.A. 74-50,114(b), that invests in a qualified business facility and hires a minimum number of employees as a result of that investment may be eligible for an investment tax credit of \$1,000 for every \$100,000 of investment made and a job creation tax credit of at least \$1,500 for every qualified business facility employee.												
Income and Privilege Taxpayers		Sector 11-Agriculture, Forestry, Fishing and Hunting	10	\$77,427	-	0	-		_	\$0		-		-
		Sector 21-Mining	8	\$47,450	-	51	-	-	-	\$15,507,087	-	-	-	-
		Sector 23-Construction	15	\$227,465		148				610 107 050				
		Sector 23-Construction	13	\$227,403	-	148	-	-	-	\$10,107,059	-	-	-	-
		Sector 31-33-Manufacturing	327	\$6,960,184		4,769	-	-	_	\$292,311,687	•	-	-	-
		Sector 42-Wholesale Trade	35	\$558,183	-	399	-	-		\$31,045,096	-	-	-	-
		Sector 44-45-Retail Trade	431	\$4,038,723	-	6,062	-	-	-	\$456,557,930	-		-	-
		Sector 48-49-Transportation and Warehousing	27	\$715,305	-	401	-	-	_	\$17,374,386	-	-	-	-
		Sector 52-Finance and Insurance	162	\$1,286,809	-	1,030	_	_		\$81,374,937			-	-
						, ,				20.10.1.3201				
		Sector 54-Professional, Scientific, and Technical Services	141	\$756,638	-	1,113	-	-	-	\$39,977,328	-			-
Total Business and Job Development Credits			1156	\$14,668,184		13,973		_		\$944,255,510		_	_	_