

SESSION OF 2007

**SUPPLEMENTAL NOTE ON SENATE BILL NO. 342**

As Amended by Senate Committee of the Whole

**Brief\***

SB 342, as amended, would create the Kansas Investment Credit Act, the Kansas Jobs Credit Act, and amend the High Performance Incentive Program Education and Training Program statute.

**Kansas Investment Credit Act**

The bill would create the Kansas Investment Credit Act as follows:

- Define "opportunity zone" to comprise at least one county, would be economically disadvantaged, and would not include any counties in a metropolitan statistical area or micropolitan statistical area.
- An eligible taxpayer for the 10.0 percent investment tax credit must meet all of the following criteria:
  - Identified under the North American Industry Classification System (NAICS);
  - Identified as a headquarters or ancillary support operation by the Secretary of Commerce for purposes of this act, regardless of NAICS classification;
  - The qualified investment for the project must equal or exceed \$50,000 for those Kansas business facilities that are located in an opportunity zone and \$150,000 for those Kansas business facilities that are not located in an opportunity zone;

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\*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <http://www.kslegislature.org>

- The taxpayer would be required to pay employees higher-than-average wages within a wage region at the Kansas business facility as follows:
  - The Secretary of Commerce would be required to develop each set of wage thresholds for comparison purposes; or the composition of wage regions used in connection with each set of wage thresholds.
  - An alternative process also would be established in the bill based on 1.5 times the aggregate statewide average wage paid by industries covered by the employment security law based on data maintained by the Secretary of Labor.
- For taxable years commencing after December 31, 2007, the tax credit would be allowed against the Kansas Income Tax Act, the Premium Tax, Privilege Fees, or Privilege Tax. The tax credit could be carried forward for ten years. The tax credit would be available to subchapter S corporations, partnerships, and limited liability companies.
- The bill would require the Secretary of Revenue and the Secretary of Commerce to work together to coordinate a set of procedures to implement the provisions of the Act and requires the business to provide information to justify claiming the credits.
- The bill would require the Secretary of Revenue to submit an annual report to the Legislature regarding utilization of the credits claimed and the first report would be due with the beginning of the 2010 Legislative Session.
- The bill would give rules and regulations authority to the Secretary of Revenue and the Secretary of Commerce.

- The bill provides that any company that receives a Kansas Investment Credit would be exempted from receiving any credits from the Enterprise Zone Act, or the Job Expansion and Investment Tax Credit Act except if those credits were earned prior to December 31, 2006. In addition, no additional credits would be earned through the High Performance Incentive Act after December 31, 2007, except they may be carried forward for the appropriate time frame. Any taxpayer who filed an application prior to July 1, 2007, may claim credits under the High Performance Incentive Act, but not under the Kansas Investment Credit Act for 2008 and 2009 to accommodate the 2008 transition period.
- The Act would expire on January 1, 2013.

### **Kansas Job Credit Act**

For taxable years after December 31, 2007, the bill would provide the following tax credits:

- Opportunity zone business: for two new employees a credit of \$3,500 per new employee against the Kansas Income Tax Act, the Premium Tax, Privilege Fees, or the Privilege Tax provided that such new employees would be paid at least the federal minimum wage.
- Business outside of an opportunity zone: for five new employees a credit of \$1,500 per new employee against the Kansas Income Tax Act, the Premium Tax, Privilege Fees, or the Privilege Tax.
- The bill would require a new employee to perform the majority of the services in either an opportunity zone or in the State of Kansas.
- The credits may be carried forward until the total amount of the tax credits are used. In the event the taxpayer does not continue to employ the required minimum number of

employees, any credit remaining would be forfeited. A taxpayer could only apply for either an opportunity zone or a Kansas Job Credit; but not both for the same employee.

- The credits would apply to subchapter S corporations, partnerships, or limited liability companies.
- The bill would require the taxpayer to provide documentation as a condition for claiming the credits.
- The Secretary of Revenue would be required to submit an annual report to the Legislature regarding utilization of the credits beginning with the 2010 Legislative Session.
- The bill would allow the Secretary of Revenue to adopt rules and regulations for administering this Act.
- The Act would expire on January 1, 2013.

#### **Amendments to Current Law**

The following amendments would be made to current law:

- The bill would provide that credits allowed under the Kansas Investment Credit Act and the Kansas Jobs Credit Act would be treated as tax paid for insurance companies, and deletes references to High Performance Incentive Program and qualified business credits.
- The Kansas Investment Credit Act would not be allowed for any amount of investment related to or computed on the basis of any investment of the proceeds of obligations issued under the Kansas Development Finance Authority Act.
- The bill would provide a sales tax exemption on the construction, reconstruction, enlargement, or remodel of a facility for a taxpayer that qualifies for a Kansas jobs or opportunity zone credit. The bill also would provide for a

fraction of the sales tax exemption when the qualified taxpayer only leases or uses only part of the facility.

- The bill would repeal the following statutes: Kansas Enterprise Zone Act, High Performance Investment Program, Business and Job Development Credit Act, and the tax credit provided for Professional Employer Associations as they would be eligible for the new investment and jobs credit programs.
- The bill would amend the High Performance Investment Training and Education statute by adding a definition of a “metropolitan county” to mean the counties of Douglas, Johnson, Leavenworth, Sedgwick, Shawnee or Wyandotte; eliminate a definition that did not apply to the training and education requirements; and allows for verifiable computer based training. The maximum amount of the credit would not exceed \$50,000 in any single tax year. The business would be required to report on the company tax return the total employment and payroll at the end of the tax year in which the credit were claimed.

## **Background**

Proponents for the bill were representatives of the Kansas Chamber of Commerce, National Federation of Independent Business, Kansas Livestock Association, Topeka Chamber of Commerce, Lenexa Chamber of Commerce, CBIZ Accounting, Z3 Graphics, Cohen Esrey Real Estate, and Mission Electronics.

The Senate Committee of the Whole made a technical correction to the bill.

The Kansas Department of Revenue provided an updated fiscal note on the bill as follows:

- Reducing the investment tax credit threshold from \$1.0 million (as outlined in the Governor’s proposal) to

\$150,000 and for opportunity zones, reduce the investment threshold from \$100,000 (Governor's proposal) to \$50,000. Fiscal Note: (\$2,000,000)

- The investment tax credit would represent \$20.0 million of new qualifying investment in Kansas.
- Reduce employment thresholds for the job credit from 20 (Governor's proposal) to 5 new employees for certain qualifying NAICS codes in non-opportunity zone areas; maintaining the 20 employee hiring requirement for ancillary support and headquarters regardless of NAICS; and reduce from 5 (Governor's proposal) to 2 new employees in an opportunity zone areas. Fiscal Note: (\$3,000,000)
- Adding the High Performance Incentive Program Training and Education Tax Credit, including verifiable computer-based training. Fiscal Note: (\$2,500,000)
- Additional administrative costs of \$538,134 in FY 2008 and \$54,060 annually recurring.
- Total fiscal impact: \$8,038,134; however, the changes do not go into effect until tax year 2008. Approximately 30 percent of the impact would fall in FY 2008 or \$2,788,134, with the full impact in FY 2009 of \$7,554,060.