

SESSION OF 2008

**SUPPLEMENTAL NOTE ON SENATE
SUBSTITUTE FOR HOUSE BILL NO. 2006**

As Amended by Senate Committee of the Whole

Brief*

Senate Sub. for HB 2006 amends the provisions of the Economic Revitalization and Reinvestment Act. The bill provides that the Kansas Development Finance Authority (KDFA) may issue bonds up to \$33.0 million plus certain bonding expenses for an eligible aviation project and in an aggregate principal amount not to exceed \$150.0 million for all eligible aviation projects. Under current law, KDFA can issue bonds of up to \$500.0 million plus certain bonding expenses for a project involving research, development, engineering, or manufacturing for an eligible business engaged in manufacturing (this provision remains in law.)

The term "eligible aviation project" means a research, development, engineering or manufacturing project undertaken to develop a new or improved business component or product and may include product development and design, applied research, manufacturing, improvement, replacement or acquisition of real or personal property and modernization and retooling of existing property in Kansas.

On the bonds issued, the principal and interest payments would be paid by income tax withholding moneys collected by the eligible aviation business from the company's employees. Under current law, the interest on the bonds was to be paid, in whole or in part, by income tax withholding moneys collected by the eligible business from employees involved in the eligible project.

*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>

In order to be eligible for income tax withholding bonds for the eligible aviation project a person, corporation, partnership, or other entity doing business in Kansas must meet conditions imposed by the Secretary of Commerce which may include the following criteria:

- Had an average payroll of at least \$300.0 million (current law \$600.0 million for an eligible business) in the base eligibility period, which would be defined as the three taxable years immediately preceding the date of application for benefits under the act;
- Had paid an average gross compensation of at least \$50,000 per employee during the base eligibility period, which would be defined as the three taxable years immediately preceding the date of application for benefits under the act;
- Had invested at least \$500.0 million (current law \$1.0 billion for eligible business) in real and tangible personal property located and currently in use in Kansas; and
- Was classified as being in the manufacturing sector using the North American Industrial Classification System (NAICS).

Eligible aviation projects which would be eligible for income tax withholding bonds are research, development, engineering, or manufacturing projects. The projects would be required to be:

- Undertaken by an eligible business relating to the development of a new or improved business component or product;
- Proposed to invest a minimum of \$500.0 million in Kansas in direct connection with the project; and
- Proposed to employ up to 4,000 full-time employees in Kansas for the project.

Under the bill, an entity could apply to the Secretary of Commerce to enter into an agreement for withholding tax bonds under the act. The application must include evidence that the applicant is an eligible aviation business or eligible business (current law) and a detailed description of the eligible aviation project or eligible project.

If the Secretary of Commerce finds that the application is from an eligible aviation business and that the project is an eligible aviation project, the Secretary could enter into an agreement for withholding tax bonds under the amended act. This agreement would be subject to review and approval by the State Finance Council. The agreement is required to have the following components:

- The agreement did commit the Secretary to request that KDFM issue the bonds in an aggregate principal amount not to exceed \$33.0 million (single project) or up to \$150.0 million for all eligible aviation projects plus costs of issuance, costs of credit enhancement, reserve funds, and capitalized interest;
- The agreement would commit the eligible aviation business to pay the principal of and interest on the bonds; except that revenues collected for income tax withholding of the employees of the eligible aviation business with respect to the eligible aviation project would go to pay the principal and interest on the bonds;
- The agreement specifically provided that if the revenue from the withholding tax was insufficient to pay interest on the bonds, the eligible aviation business remains obligated to make the payments;
- The terms and conditions of the bonds must be set forth in the agreement or in the financing documents related to the bond issuance;
- If the eligible aviation business terminates, cancels, or reduces the scope of the eligible project approved by the

Secretary, the agreement must provide that, with respect to debt service, the eligible business remained responsible for payment of the entire outstanding principal as well as any interest still outstanding and income tax withholding moneys would not be available to pay the portion of the debt service obligation;

- The agreement contains a method for reconciling, at least annually, those income tax refunds and balances due resulting from income tax withholding with respect to the eligible aviation project; and
- The agreement includes a provision requiring the eligible aviation business to agree to be subject to post audit under the Legislative Post Audit Act and be responsible for audit expenses. The agreement also must provide that the eligible business could not limit access to information required under the Legislative Post Audit Act.

The bill authorizes KDFA to issue bonds to finance the eligible aviation project. Under the bill, the maximum maturity of the bonds would be 20 years unless the Secretary of Commerce made a finding that a maturity of more than 20 years was necessary, in which case the maximum maturity of the bonds would be 30 years. The income tax withholding of the employees of the eligible aviation business with respect to the eligible aviation project could go only to pay principal and interest on the bonds for up to 20 years from the issuance of the bonds.

The bill would create the Special Economic Revitalization Fund and direct the State Treasurer to credit to it income tax withholding revenues collected by the eligible business with respect to the eligible aviation project.

The bill also describes the process for distributing the moneys from the Special Economic Revitalization Fund to the KDFA and would clarify that distributions from the Fund would not be subject to appropriation. The bill also would clarify that

the interest generated by the Special Economic Revitalization Fund would remain in that Fund.

Under the bill, the eligible aviation business would not be allowed to participate in the IMPACT program with respect to the eligible aviation project. The bill would provide that the Secretary of Commerce could include provisions in the agreement to limit or reduce the amount of eligible income tax credits, including job expansion and investment tax credits, research and development tax credits, and business machinery and equipment tax credits. However, the bill would not prohibit the eligible aviation business from receiving tax credits for investments which were unrelated to the bonds.

The bill would prohibit the use of bond proceeds to increase financial benefits for the chief executive officer, chief financial officer, or any officers of the eligible business.

The bill would impose a sunset of July 1, 2013, amending the original sunset of July 1, 2005, after which time no new eligible project or eligible aviation projects could be approved for income tax withholding bonds.

The bill would make the hiring and use of employees from whom the income tax withholding was collected subject to post audit under the Legislative Post Audit Act. All audit expenses incurred would be paid by the eligible business or eligible aviation business.

Background

Appearing before the Senate Committee as proponents were the Secretary of Commerce; Andy Schlapp, Governmental Relations Director for Sedgwick County; Tom Bruno, representing the Sedgwick County Technical Education and Training Authority and Wichita Area Technical College; Bernie Koch, representing Wichita Chamber of Commerce; Dale Goeter, representing City of Wichita; and Bud Burke, representing Cessna Aircraft Co.

The Senate Committee of the Whole made technical corrections to the bill.

No fiscal note was available at the time of the hearing on April 1, 2008.