

SESSION OF 2010

**CONFERENCE COMMITTEE REPORT BRIEF
HOUSE BILL NO. 2554**

As Agreed to May 4, 2010

Brief*

HB 2554 would expand the Promoting Employment Across Kansas (PEAK) program, enacted in 2009, in a number of ways. That program authorizes a diversion of employee withholding taxes under certain circumstances to qualified companies or third parties performing services on behalf of such companies. The bill would clarify that the Secretary of the Department of Commerce has discretion in administering provisions of the PEAK Act.

Definitions - New substantive definitions would be added, and some existing terms would be redefined. "Expanding business" would be defined generally to include existing business operations in Kansas that are proposing projects that would provide unique economic development opportunities and in the opinion of the Secretary of Commerce may be at significant risk of being located outside the state. The businesses would be eligible to be considered as qualified companies for purposes of the PEAK program. The existing definition of "metropolitan county" would add Leavenworth County to the current statutory list of Douglas, Johnson, Sedgwick, Shawnee and Wyandotte counties. The list would then mirror the counties listed in Kansas Investments in Major Projects and Comprehensive Training (IMPACT) Program (KSA 74-50,114). "NAICS code industry average wage" would mean the average wage paid to companies classified in the same North American Industry Classification System (NAICS) code as the qualified company for the region in which the qualified company employs new employees as reported by the

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Department of Labor in its most recent annual report. The existing definition of “new employee” also would be expanded to include persons located to Kansas from another country as well as from another state.

Eligibility Requirements—Under the 2009 law, companies must relocate all of their facilities and employment to Kansas in order to qualify to retain a portion of the company’s payroll withholding taxes. The bill would relax that requirement so that a company would be eligible if it relocated or expanded a portion of its business operations into the state. An existing Kansas business that relocated or expanded within the state also would be made eligible; however, that business would not be able to claim a tax benefit until after January 1, 2012.

A current requirement that employees must be compensated at a rate equivalent to at least 100 percent of the county average wage would be amended such that the qualifying compensation be at least 100 percent of the county “median” wage. A new route to qualification also would be provided relative to employee compensation equal to at least 100 percent of the North American Industry Classification System code industry average wage.

Benefits—Qualified companies would be eligible to retain 95 percent of the employees’ withholding taxes if the median wage paid to the new employees is equal to or greater than 100 percent of the median wage paid in the county. Current law bases the benefit in terms of average wage. Under the PEAK Program, the period of time that benefits could incur varies, up to a maximum of ten years, depending upon the average wage rate paid and the number of employees hired. The aggregate amount of benefits for companies already in the state that relocate or expand would be capped at \$4.8 million per fiscal year starting in FY 2012.

As a means to offset the PEAK benefits that may be paid to companies already in the state, in-state companies in the six metropolitan counties listed above are exempted from eligibility

for the Business and Job Development Tax Credit (KSA 74-32,153 and 79-32,160a).

Companies qualifying for PEAK under the 2009 law are prohibited from also participating in a separate withholding tax diversion program, the IMPACT Program. The bill would relax that restriction such that companies could qualify for both programs but not relative to the same employees.

Other Provisions—The bill would expand the operational expenses of the IMPACT Program in the Department of Commerce to include an independent evaluation of the effectiveness of economic development incentives. The Secretary of Commerce would initiate an evaluation after consultation with the Secretary of Revenue.

Persons who are members of the Legislature on the effective date of the bill would be prohibited from availing themselves of any PEAK program benefits until after July 1, 2015. A Legislative Post Audit on the effectiveness of the program would be required to be submitted at the outset of the 2015 Session. The audit report would make recommendations on the in-state cap on benefits.

A qualified company would be required to submit payroll withholding data to the Secretary of the Department of Revenue either electronically or in the manner prescribed by the Secretary.

The bill also would make technical corrections to the State's Economic Revitalization and Reinvestment Act to clarify that either wind or solar energy businesses could be eligible for the issuance of bonding for certain qualified development or manufacturing projects.

Conference Committee Action

The Conference Committee agreed to amend the bill with most of the contents that were contained in Senate Sub. for Sub. for HB 2538 which was vetoed by the Governor on April

15. The Committee excluded those provisions that related to performance audits of economic development incentives that would have been conducted by Kansas, Inc.

The Conference Committee agreed with the Senate's amendment to the bill that would characterize the State Finance Council's approval of bonding agreements as a delegation of legislative power. The Committee further agreed to delete language that would have authorized the Council to grant approval when the Legislature was in session.

Background

The PEAK Act was enacted in 2009 SB 97. The original HB 2538 was supported by Representative Kleeb and a number of economic development conferees.

In response to committee discussion, the House Taxation Committee voted to make a number of amendments developed by the Department of Commerce in consultation with Representative Kleeb, and to recommend that a substitute bill be created.

The House Committee of the Whole, on February 26, adopted an additional amendment at the suggestion of Representative Kleeb that included provisions that eliminated a proposed application fee, adjusted a qualification requirement relating to "average" wages paid to instead refer to "median" wages paid, and clarified the authority of the Secretary of Commerce.

The House Committee of the Whole also adopted the provisions relating to the Post Audit and the prohibition against current legislators' participation in the program.

The Senate Commerce Committee recommended a substitute bill to clarify that the Secretary of Commerce has discretionary authority when administering provisions of the PEAK Program and that it is not an entitlement program. The Senate Committee further amended the bill to distinguish

between in-state beneficiaries, who would have their aggregate benefits capped at \$4.8 million annually, and out-of-state companies which would not face an aggregate cap on benefits. The IMPACT Program was amended to allow its operational budget to provide resources for future tax credit audits and confidentiality of data disclosed to Kansas, Inc.

The Senate Committee of the Whole amended the bill to include a definition for “NAICS code industry average wage” and to make other clarifications of the provisions already contained in the bill. The Committee of the Whole also amended the bill to permit Kansas, Inc., to purchase software considered necessary to conduct program audits on tax credits.

Proponents generally argued that additional sales and other tax receipts attributable to the expenditures and other activities of new or maintained employees would offset the fiscal note attributable to the diversion of withholding taxes from the State General Fund (SGF) back to the companies, and that any economic expansion could occur instead in other states but for the expansion of the PEAK program.

The Department of Revenue had indicated that the original bill would have been expected to reduce SGF receipts as a result of such diversion in the following amounts:

(\$ in millions)

FY 2011	-6.050
FY 2012	-12.350
FY 2013	-18.890
FY 2014	-25.690
FY 2015	-32.760
5-year total	-95.740

The original fiscal note also indicated that the Department of Commerce likely would seek an additional \$0.160 million in FY 2011 administrative costs attributable to the expansion of the program. There was no change to the above dollar

amounts contained in the Department of Revenue's revised fiscal note for the House Committee of the Whole version of the bill.

According to the revised fiscal note provided by the Department of the Revenue, the bill would have no fiscal impact.

PEAK act revisions