

As Amended by House Committee

Session of 2017

HOUSE BILL No. 2168

By Representatives Waymaster, Claeys, Concannon, Davis and Hoffman

1-25

1 AN ACT concerning rural economic development; enacting the ad astra
2 rural jobs act.

3

4 *Be it enacted by the Legislature of the State of Kansas:*

5 Section 1. Sections 1 through 11, and amendments thereto, shall be
6 known and may be cited as the ad astra rural jobs act.

7 Sec. 2. As used in sections 1 through 11, and amendments thereto:

8 (a) "Affiliate" means a person that directly or indirectly through one
9 or more intermediaries, controls, is controlled by or is under common
10 control with another person or entity. A person is controlled by another
11 person if the controlling person holds, directly or indirectly, the majority
12 voting or ownership interest in the controlled person or has control over
13 the day-to-day operations of the controlled person by contract or by law.

14 (b) "Approved investment company" means a person, not including
15 an individual, seeking to make successful developmental venture capital
16 investments in rural business concerns that will create wealth and job
17 opportunities in identified rural areas and that has been approved by the
18 secretary pursuant to section 4, and amendments thereto.

19 (c) "Closing date" means the date on which an approved investment
20 company collects all of the committed dollar amounts, for purposes of
21 making venture capital investments in rural business concerns, as required
22 under section 4(f), and amendments thereto.

23 (d) "Credit-eligible capital contribution" means an investment of cash
24 in an approved investment company made:

25 (1) (A) For an equity interest in the approved investment company; or

26 (B) for the purchase, at par value or at a premium, of a debt
27 instrument issued by the approved investment company that has a maturity
28 date at least five years from the date of investment; and

29 (2) by a person subject to income tax liability imposed against such
30 person under the Kansas income tax act, excluding withholding tax
31 imposed under K.S.A. 79-3294 et seq., and amendments thereto, a national
32 banking association, state bank, trust company or savings and loan
33 association paying an annual tax on its net income pursuant to article 11 of
34 chapter 79 of the Kansas Statutes Annotated, and amendments thereto, or
35 any insurance company paying the premium tax and privilege fees
36 imposed pursuant to K.S.A. 40-252, and amendments thereto.

1 (e) "Department" means the department of commerce.

2 (f) "Funding" means any venture capital or venture equity investment
3 by an approved investment company in a rural business concern or any
4 loan to a rural business concern by an approved investment company with
5 a final maturity date of at least two years after the date of issuance.

6 (g) "Growth capital" means the total of cash investments in an
7 approved investment company, including credit-eligible capital
8 contributions from investors and other cash investments, including
9 government grants, guaranteed debenture funds, or other public funds, in
10 the amount as approved by the secretary and stated on the notice issued
11 under section 4(e), and amendments thereto. At least ~~40%~~ 60% of growth
12 capital must be comprised of credit-eligible capital contributions. At least
13 10% of growth capital must be composed of equity investments
14 contributed by affiliates of the approved investment company, including
15 employees, officers and directors of such affiliates.

16 (h) "Operating company" means a person that is doing business in
17 Kansas or seeking to do business in Kansas and that is not a publicly
18 traded business.

19 (i) "Person" means an individual, proprietorship, partnership, limited
20 liability partnership, association, trust, estate, firm, group, corporation,
21 limited liability corporation or other organization.

22 (j) "Principal business operations" means the location where at least
23 60% of the operating company's employees work or where employees who
24 are paid at least 60% of the operating company's payroll work. An
25 operating company that has agreed to move the location of its principal
26 business operations using the proceeds of its funding for a purpose of
27 meeting the definition of a rural business concern shall be deemed to have
28 its principal business operations in the new location at the time of such
29 agreement, subject to the operating company completing the agreed
30 relocation within 180 days after funding.

31 (k) "Rural area" means a location:

32 (1) That is not within a city with a population greater than 60,000, or
33 within the urbanized area contiguous and adjacent to the city, according to
34 the most recent decennial United States census; or

35 (2) determined to be a "rural area" by the secretary upon
36 consideration of factors including, but not limited to:

37 (A) Population density, density of commercial development and
38 availability of non-farm employment; or

39 (B) attachment to the urbanized area of a city as defined in paragraph
40 (1) by a contiguous area of urbanized census blocks that is not more than
41 two census blocks wide.

42 (l) "Rural business concern" means an operating company that:

43 (1) Has its principal business operations in one or more rural areas in

1 Kansas;

2 (2) has fewer than 500 employees or had an average federal adjusted
3 gross income of less than \$15,000,000 in the three preceding tax years;
4 and

5 (3) engages in industries related to manufacturing, plant sciences,
6 technology, or agricultural technology or, if not engaged in such industries,
7 the secretary makes a determination that the targeted funding of the
8 operating company will be highly beneficial to the economic growth of the
9 state and the rural area or areas in which the operating company is or will
10 be located.

11 (m) "Secretary" means the secretary of commerce.

12 Sec. 3. (a) There is hereby established in the state treasury the ad
13 astra rural jobs fund, which shall be administered by the secretary of
14 commerce. All expenditures from the ad astra rural jobs fund shall be
15 solely for the administration of the ad astra rural jobs act. All expenditures
16 from the ad astra rural jobs fund shall be made in accordance with
17 appropriation acts upon warrants of the director of accounts and reports
18 issued pursuant to vouchers approved by the secretary of commerce or the
19 secretary's designee.

20 (b) All moneys received by the secretary for the ad astra rural jobs act
21 shall be deposited in the state treasury in accordance with the provisions of
22 K.S.A. 75-4215, and amendments thereto, and shall be credited to the ad
23 astra rural jobs fund.

24 (c) On or before the 10th day of each month, the director of accounts
25 and reports shall transfer from the state general fund to the ad astra rural
26 jobs fund interest earnings based on:

27 (1) The average daily balance of moneys in the ad astra rural jobs
28 fund established by this section for the preceding month; and

29 (2) the net earnings rate of the pooled money investment portfolio for
30 the preceding month.

31 Sec. 4. (a) Beginning on January 1, 2018, the department shall accept
32 applications for approved investment companies. The application shall
33 include:

34 (1) The amount of growth capital sought by the applicant;

35 (2) either:

36 (A) A copy of the applicant's or its affiliate's license as a rural
37 business investment company under 7 U.S.C. § 2009cc or as a small
38 business investment company under 15 U.S.C. § 681 and evidence
39 demonstrating that the applicant or its affiliates have invested a minimum
40 amount, as required by rules and regulations promulgated by the secretary,
41 in operating companies and in operating companies located in rural areas;
42 or

43 (B) evidence demonstrating that the applicant or its affiliates have

1 invested a minimum amount, as required in rules and regulations
2 promulgated by the secretary, in operating companies through one or more
3 federal or state tax credit programs administered by an agency of this state
4 and evidence that the applicant has domiciled in this state for the three
5 years preceding its application;

6 (3) an estimate of the number of jobs that will be created or retained
7 in Kansas as a result of the applicant's funding;

8 (4) a 10-year business plan for the applicant's proposed funding that
9 includes a revenue impact assessment prepared by a nationally recognized
10 third-party independent economic forecasting firm approved by the
11 secretary, and that projects state and local tax revenue to be generated by
12 the applicant's funding under the business plan;

13 (5) an affidavit from each investor in the applicant stating a
14 commitment to make a credit-eligible capital contribution in support of the
15 business plan and the amount of such credit-eligible capital contribution;

16 (6) a nonrefundable application fee not to exceed \$5,000; and

17 (7) such other information as may be required in rules and regulations
18 promulgated by the secretary.

19 (b) The secretary shall make an application determination within 60
20 days of receipt in the order in which applications are received. The
21 secretary shall deem applications received on the same day as received
22 simultaneously. Except as provided under section 7(d), and amendments
23 thereto, the secretary shall not approve more than \$166,666,666 in growth
24 capital and not more than \$100,000,000 in credit-eligible contributions
25 under this section ~~in any one fiscal year~~. If requests for growth capital
26 exceed this limitation, the secretary shall proportionally reduce the growth
27 capital and the credit-eligible capital contributions for each approved
28 application as necessary to meet the limitation. No application by an
29 applicant and its affiliates shall be approved for more than $\frac{1}{3}$ the limitation
30 provided in this subsection.

31 (c) The secretary shall deny an application submitted under this
32 section if:

33 (1) The application fee is not paid in full;

34 (2) the applicant does not satisfy all the requirements under
35 subsection (a)(2);

36 (3) the revenue impact assessment does not demonstrate that the
37 applicant's business plan will result in a positive economic impact in a
38 rural area or areas in Kansas over a 10-year period that exceeds the
39 cumulative amount of tax credits the applicant seeks;

40 (4) (A) commitments for credit-eligible capital contributions do not
41 equal at least 60% of the total growth capital sought under the applicant's
42 business plan; or

43 (B) commitments of equity investments contributed by affiliates of

1 the approved investment company, including employees, officers and
2 directors of such affiliates, do not equal at least 10% of the total growth
3 capital sought;

4 (5) the secretary has already approved the maximum amount of
5 growth capital and credit-eligible capital contributions allowed under
6 subsection (b); or

7 (6) the secretary determines that the applicant does not satisfy any
8 other requirement of the department as set forth in rules and regulations
9 promulgated by the secretary.

10 (d) If the secretary denies an application, the applicant may provide
11 additional information within 15 days of the notice of denial to the
12 secretary to complete, clarify or cure defects in the application identified
13 by the secretary. The secretary shall reconsider the application and make a
14 determination within 30 days of receiving all additional information to be
15 considered before approving any pending applications submitted after the
16 denied applicant's original submission date. The secretary shall not deny
17 an application or reduce the requested growth capital for reasons other
18 than those described under subsection (b) or (c).

19 (e) If the application is approved, the secretary shall provide written
20 notice to the applicant stating:

21 (1) The applicant is an approved investment company; and

22 (2) the approved amount of the growth capital.

23 (f) (1) After receiving notice of approval from the department
24 pursuant to subsection (e), an approved investment company shall within
25 60 days:

26 (A) Collect the credit-eligible capital contributions from each investor
27 whose affidavit was listed in the application; and

28 (B) collect one or more investments of cash that, if added to credit-
29 eligible capital contributions, equal the approved investment company's
30 growth capital and deliver to the department documentation sufficient to
31 prove that such amounts have been collected.

32 (2) If the approved investment company fails to fully comply with the
33 provisions of paragraph (1), the approved investment company's approval
34 shall lapse and the lapsed corresponding growth capital and credit-eligible
35 capital contributions previously approved by the secretary shall not count
36 toward the total growth capital and credit-eligible capital contribution
37 limits of subsection (b). The secretary shall first award lapsed growth
38 capital pro rata to each approved investment company that was awarded
39 less than its requested growth capital in the order in which the application
40 was received. Each approved recipient investment company may allocate
41 such awarded growth capital to its investors in its discretion. Any
42 remaining growth capital and available tax credits may be awarded by the
43 secretary to successful new applicants.

1 (g) Application fees submitted to the department shall be deposited in
2 the state treasury and credited to the ad astra rural jobs fund. No other fee
3 shall be charged for the administration of tax credits by the department or
4 the department of revenue. If necessary, the department may request and,
5 subject to appropriation acts, shall receive appropriations necessary to
6 implement and administer the program.

7 (h) The department shall provide a copy of the notice required in
8 subsection (e) to the department of revenue.

9 Sec. 5. An approved investment company, before making a funding,
10 shall request a written opinion from the department stating whether the
11 business in which it proposes to invest is a rural business concern. The
12 department shall respond to a request with its determination within 30
13 business days of receiving such request. If the department fails to respond
14 within 30 business days of receiving the request, the business for which
15 determination is sought shall be considered a rural business concern. The
16 department's determination shall govern whether the business is
17 considered a rural business concern for purposes of sections 1 through 11,
18 and amendments thereto, except for a failure of a rural business concern to
19 complete and maintain any agreed relocations of its principal business
20 operations or for fraud.

21 Sec. 6. (a) There shall be allowed as a credit against the tax liability
22 of a taxpayer subject to the tax imposed under the Kansas income tax act,
23 the annual tax on net income pursuant to article 11 of chapter 79 of the
24 Kansas Statutes Annotated, and amendments thereto, or the premium tax
25 and privilege fees imposed pursuant to K.S.A. 40-252, and amendments
26 thereto, for taxpayers that make a credit-eligible capital contribution to an
27 approved investment company and that receive a tax credit certificate
28 issued under this section. The credit shall not be sold, transferred or
29 allocated to any other entity, except an affiliate.

30 (b) The taxpayer shall earn a vested credit equal to the amount of the
31 taxpayer's credit-eligible capital contribution to the approved investment
32 company upon providing documentation to the department of the
33 contribution. Upon review and approval of the documentation, the
34 department shall issue a tax credit certificate in the amount of the tax
35 credit approval by the department to the taxpayer. The taxpayer may claim
36 an amount up to 20% of the tax credit certificate authorized under this
37 section for each of the five tax years beginning on or after July 1, 2019,
38 exclusive of amounts carried forward under subsection (c).

39 (c) If the amount of the tax credit exceeds the taxpayer's tax liability
40 for the taxable year, the amount thereof which exceeds the tax liability
41 may be carried forward for deduction from the taxpayer's tax liability in
42 the succeeding taxable year or years until the total amount of the tax credit
43 has been deducted from tax liability, except that no such tax credit shall be

1 carried forward for deduction after the fifth taxable year succeeding the
2 taxable year in which such credit initially was claimed.

3 (d) The maximum amount of credits claimed in any one fiscal year by
4 all taxpayers pursuant to this section shall not exceed \$20,000,000,
5 exclusive of amounts carried forward under subsection (c).

6 Sec. 7. (a) The secretary shall revoke a tax credit certificate issued
7 under section 6, and amendments thereto, upon a determination by the
8 secretary of commerce that any of the following occur with respect to an
9 approved investment company before it exits the program in accordance
10 with subsection (f):

11 (1) The approved investment company does not invest 100% of its
12 growth capital in funding within two years of the closing date;

13 (2) the approved investment company, after investing 100% of its
14 growth capital in funding, fails to maintain that investment for the five
15 years after the closing date. An investment that is sold or repaid, in whole
16 or in part, shall be deemed maintained if the approved investment
17 company reinvests an amount equal to the returned or recovered portion,
18 excluding any profits realized, in other funding within 12 months of the
19 receipt of the returned or recovered portion;

20 (3) the approved investment company, before exiting the program,
21 makes a distribution or payment that results in the approved investment
22 fund having less than 100% of its growth capital invested in fundings or
23 available for investment in fundings and held as cash or other marketable
24 securities;

25 (4) the approved investment company invests more than 20% of its
26 growth capital in the same rural business concern, including amounts
27 invested in affiliates of such rural business concern;

28 (5) the approved investment company invests funding in a rural
29 business concern that, directly or indirectly through an affiliate, owns, has
30 the right to acquire an ownership interest in, makes a loan to, or makes an
31 investment in the approved investment company, an affiliate of the
32 approved investment company, or an investor in the approved investment
33 company. This paragraph shall not apply to investments in publicly traded
34 securities by a rural business concern or an owner or affiliate of such rural
35 business concern. For purposes of this paragraph, an approved investment
36 company shall not be considered an affiliate of a rural business concern
37 solely as a result of its funding; or

38 (6) the approved investment company invests funding in a rural
39 business concern that fails to meet or maintain an agreed relocation of its
40 principal business operations.

41 (b) Before revoking one or more tax credit certificates pursuant to
42 subsection (a), the secretary shall notify the approved investment company
43 of the reasons for the pending revocation. The approved investment

1 company shall have 90 days from the date of such notice to correct the
2 violations to the satisfaction of the secretary and avoid revocation of the
3 tax credit certificate. The approved investment company shall be charged
4 \$5,000 per day for each day taken after 90 days to correct the violations,
5 and such amounts shall be deposited in the state treasury to the credit of
6 the ad astra rural jobs fund.

7 (c) If the secretary revokes a tax credit certificate, the department of
8 revenue shall make an assessment for the amount of the credit claimed by
9 the certificate holder before the certificate was revoked.

10 (d) If tax credit certificates are revoked under this section, the
11 associated growth capital and credit-eligible capital contributions do not
12 count toward the limit on total growth capital and credit-eligible capital
13 contributions described under section 4(b), and amendments thereto. The
14 secretary shall first award reverted growth capital pro rata to each
15 approved investment company that was awarded less than its requested
16 growth capital. Any remaining growth capital may be awarded by the
17 department to new approved investment companies.

18 Sec. 8. (a) After five calendar years from the closing date, an
19 approved investment company shall be allowed to leave the program if
20 none of the approved investment company's tax credit certificates were
21 revoked or are pending revocation. The secretary shall release an approved
22 investment company from the program and the regulations of sections 1
23 through 11, and amendments thereto, within 60 days of receiving a request
24 to exit.

25 (b) ~~If the actual revenue impact from its funding~~ **number of jobs**
26 **created or retained by the rural business concerns that received**
27 **fundings from an approved investment fund** through the date of the
28 proposed distribution is:

29 (1) Less than 60% of the amount projected in the approved
30 investment fund's business plan filed as part of its application for
31 certification, then the state shall receive 30% of any distribution or
32 payment to an equity holder in an approved investment fund in excess of
33 the sum of the amount of equity capital invested in the approved
34 investment fund by such equity holder and an amount equal to any
35 projected increase in the equity holder's federal or state tax liability,
36 including penalties and interest, related to the equity holder's ownership,
37 management or operation of the approved investment fund;

38 (2) greater than 60% but less than 100% of the amount projected in
39 the approved investment fund's business plan filed as part of its application
40 for certification, then the state shall receive 15% of any distribution or
41 payment to an equity holder in an approved investment fund in excess of
42 the sum of the amount of equity capital invested in the approved
43 investment fund by such equity holder and an amount equal to any

1 projected increase in the equity holder's federal or state tax liability,
2 including penalties and interest, related to the equity holder's ownership,
3 management or operation of the approved investment fund; or

4 (3) equal to or greater than the amount projected in the approved
5 investment fund's business plan filed as part of its application for
6 certification, then the state shall receive 0% of any distribution or payment
7 to an equity holder in an approved investment fund in excess of the sum of
8 the amount of equity capital invested in the approved investment fund by
9 such equity holder and an amount equal to any projected increase in the
10 equity holder's federal or state tax liability, including penalties and interest,
11 related to the equity holder's ownership, management or operation of the
12 approved investment fund.

13 (c) The secretary shall not revoke a tax credit certificate due to any
14 actions of an approved investment company that occur after the date the
15 department acknowledges an approved investment company's exit from
16 the program.

17 (d) Moneys received by the secretary pursuant to this section shall be
18 deposited in the state treasury to the credit of the ad astra rural jobs fund.

19 Sec. 9. (a) Each approved investment company shall submit a report
20 to the department on or before the fifth business day after the second
21 anniversary of the closing date containing:

22 (1) The approved investment company's bank statements evidencing
23 each funding;

24 (2) the name and location of each business receiving funding,
25 including evidence that the business qualified as a rural business concern
26 at the time the investment was made;

27 (3) the number of employment positions created or retained as a
28 result of the approved investment company's fundings as of December 31st
29 of the preceding year; and

30 (4) other information necessary for the department to administer the
31 program.

32 (b) On or before April 30th of each year following the year in which
33 the report required under subsection (a) is due, the approved investment
34 company shall submit an annual report to the department containing:

35 (1) The number of employment positions created or retained as a
36 result of the approved investment company's fundings as of December 31st
37 of the preceding calendar year;

38 (2) the average annual salary of such positions; and

39 (3) any other information required by the department.

40 Sec. 10. The secretary of revenue and the secretary of commerce may
41 promulgate rules and regulations to implement the provisions of the ad
42 astra rural jobs act.

43 Sec. 11. (a) Except as provided in subsection (b), the provisions of the

1 ad astra rural jobs act shall sunset on December 31 of the sixth year
2 following the effective date of this act.

3 (b) Nothing in this section shall be construed so as to preclude a
4 taxpayer that makes a qualified equity investment prior to the sunset of the
5 ad astra rural jobs act from claiming tax credits relating to such qualified
6 equity investment for each credit allowance date.

7 Sec. 12. This act shall take effect and be in force from and after its
8 publication in the statute book.