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January 31, 2022

The Honorable Renee Erickson, Chairperson
Senate Committee on Commerce
Statehouse, Room 546-S
Topeka, Kansas 66612

Dear Senator Erickson:

SUBJECT: Fiscal Note for SB 347 by Senate Committee on Commerce

In accordance with KSA 75-3715a, the following fiscal note concerning SB 347 is respectfully submitted to your committee.

SB 347 would enact the Attracting Powerful Economic Expansion (APEX) Act. The bill includes tax and other incentives for projects in specified industries or for a national corporate headquarters with specified capital investment requirements of at least $1.0 billion completed within five years. The Act would be administered by the Department of Commerce. The qualified firm would be a for-profit business that is engaged in one or more of the following industries: advanced manufacturing; aerospace; distribution, logistics, and transportation; food and agriculture; or professional and technical services. The qualified firm cannot be engaged in mining; swine production; ranching; or gaming. A qualified firm is allowed to select up to five qualified suppliers, with approval of the Secretary of Commerce, that are located in Kansas that would provide at least $10.0 million in supplies to the qualified firm to receive incentives detailed below. The Act lists the eligible incentives for the qualified firm and qualified supplier that could be approved by the Secretary of Commerce:

1. Investment tax credit of up to 15.0 percent of the qualified investment with the percentage amount determined by the Secretary of Commerce from guidelines outlined in the Act. The Secretary would also determine the amount of the tax credit that would be refundable from 50.0 percent to 100.0 percent from guidelines outlined in the Act. The tax credit would be claimed in three equal installments over the next three years after the year the qualified investment is made. Any non-refundable portion of the tax credit that is not claimed within three years would be forfeited. The bill would create the Attracting Powerful Economic Expansion Payroll Incentive Fund to be administered by the Secretary of Commerce.

2. Beginning on July 1, 2022, up to 50.0 percent reimbursement of any eligible employee training and education expense for new employees with the percentage amount determined by the Secretary of Commerce from guidelines outlined in the Act. The training program would be capped at $5.0 million per fiscal year and would be allowed for the first five years of the project. The bill would create the Attracting Powerful Economic Expansion New Employee Training and Education Fund to be administered by the Secretary of Commerce.
3. Real property tax exemption of 50.0 percent for qualified business facilities that are manufacturing facilities or headquarters located in a foreign trade zone beginning in tax year 2022. The length of time of the property tax exemption would be determined by the Secretary of Commerce from guidelines outlined in the Act.
4. Sales tax exemption for the construction, reconstruction, enlarging, or remodeling of qualified business facility that would begin on the effective date of the Act and last until the qualified business facility is put into service. The sales tax exemption would also be extended for any contractor to perform duties related to the project. The bill includes reporting requirements for contractors and penalties for the use of the sales tax exemption that is determined to not be part of this project which would be punishable as a misdemeanor.

Qualified firms could retain up to 10.0 percent of total payroll costs paid to its qualified business facility employees beginning in tax year 2022 for up to ten years with the amounts determined by the Secretary of Commerce from guidelines outlined in the Act. Beginning in tax year 2022, qualified suppliers would be eligible to retain up to 65.0 percent of qualified supplier's Kansas payroll withholding taxes for up to ten years with the amounts determined by the Secretary of Commerce from guidelines outlined in the Act.

The qualified firm and qualified supplier would be subject to claw back provisions if certain terms of the incentive agreement are violated. The qualified firm may be required to enter into a completion bond paid to the State of Kansas if the facility has not been constructed to the degree specified in the agreement. The qualified firm or qualified supplier that is approved by the Secretary of Commerce for these incentives would be prohibited from participating in the Promoting Employment Across Kansas Program, the High Performance Incentive Program, the Kansas Industrial Training Program, or Kansas Retraining Programs. Certain confidential financial information or trade secrets would not be disclosed to the public and would be an exception to the Open Records Act; however, this information can be requested by Legislative Division of Post Audit. This confidentiality provision would expire on July 1, 2027, unless renewed by the Legislature. As a condition of receiving these incentives, the qualified firm and any qualified supplier would be required to agree to cooperate with any audit undertaken by the Secretary of Revenue. The Secretary of Commerce would be required to conduct an annual review of the qualified firm and any qualified supplier and certify to the Secretary of Revenue that each are qualified to continue to receive incentives. The Secretary of Commerce and the Secretary of Revenue would have the power to write rules and regulations to implement the Act.

On January 31 of each year, the Secretary of Commerce would be required to submit a report to the Governor, the Senate Committee on Assessment and Taxation, Senate Committee on

Commerce, House Committee on Taxation, and House Committee on Commerce, Labor and Economic Development based on information received from each qualified firm or qualified supplier receiving benefits under the Act. The report would be required to include the names of the qualified firms or qualified suppliers; the types of qualified firms or qualified suppliers utilizing the Act; the location of the such companies and the location, description, and economic and industry impact of the companies' business operations in Kansas; the number of new employees hired; the wages paid for the new employees; the annual and cumulative amounts of investments made; the annual amount of each benefit provided under this Act; the estimated net state fiscal impact, including the direct and indirect new state taxes derived from the new employees hired; and an estimate of the multiplier effect on the Kansas economy of the benefits received under this act.

SB 347 has the potential to reduce State General Fund revenues in FY 2023 and in future fiscal years, while increasing capital investment, creating high paying jobs, and establishing new and ancillary industry development in Kansas. However, without knowledge of a specific incentive agreement, a precise fiscal effect of SB 347, including ancillary benefits, is not possible to formulate. The bill would allow the Secretary of Commerce discretion, within the parameters of the legislation, to negotiate with a qualified firm with a new incentive package with different ranges of incentives amounts that in some cases are refundable or non-refundable. In addition, some of the incentives could be spread out over multiple years, which could spread the fiscal effect over those years.

The Department of Commerce indicates that Kansas is a finalist for a megaproject that would bring $4.0 billion in new private investment to the state, create 4,000 permanent jobs with an average wage of $50,000 (which is above the county median average wage) and add nearly 6,000 more jobs during the construction phase. The Department also indicates that the project will require suppliers to relocate with this company which are expected to hire thousands of additional workers. The Department of Commerce indicates that bill would require $90,633 from the State General Fund in FY 2023 to implement the bill. The bill would require the Department hire 1.00 new FTE position to manage the new Attracting Powerful Economic Expansion Program.

The Department of Revenue indicates that it would require a total $141,598 from the State General Fund in FY 2023 to implement the bill and to modify the automated tax system. The required programming for this bill by itself would be performed by existing staff of the Department of Revenue. In addition, if the combined effect of implementing this bill and other enacted legislation exceeds the Department's programming resources, or if the time for implementing the changes is too short, additional expenditures for outside contract programmer services beyond the Department's current budget may be required.

The Department of Revenue estimates that the 50.0 percent property tax abatement component of the bill has the potential to forgo property tax revenues for certain property located in a foreign trade zone. The Department of Revenue does not have data on the assessed valuation of the specific property that would receive this 50.0 percent abatement or how often a new abatement would occur to make a precise estimate of the amount of forgone property tax revenue. The bill would forgo the amount of property tax revenues that would be collected for the two building funds, the Educational Building Fund and the State Institutions Building Fund. Forgone property tax revenue would also have an effect on state expenditures for aid to school districts. To the extent that forgone property tax revenue would not be available from the state's uniform mill levy to fund expenditures for school districts. Local governments that levy a property tax would also forgo revenues; however, the amount of forgone property tax revenues cannot be estimated.

The Kansas Department of Transportation indicates that the bill has the potential to forgo state revenues to the State Highway Fund by allowing for a new sales tax exemption. State Highway Fund revenues are used to fund projects funded under the comprehensive transportation plan.

The League of Kansas Municipalities and the Kansas Association of Counties indicate that the bill has the potential to forgo local property tax revenues and local sales tax revenues related to a major economic development project located in a foreign trade zone. However, they do not have a basis on which to estimate the amount of forgone local sales tax revenue or property taxes that would be abated to make a precise estimate of the fiscal effect on local governments. Any fiscal effect associated with SB 347 is not reflected in *The FY 2023 Governor's Budget Report*.

Sincerely,

Adam Proffitt
Director of the Budget

cc: Lynn Robinson, Department of Revenue
Brendan Yorkey, Department of Transportation
Wendi Stark, League of Municipalities
Jay Hall, Association of Counties
Sherry Rentfro, Department of Commerce