SESSION OF 2022

SUPPLEMENTAL NOTE ON HOUSE SUBSTITUTE FOR SENATE BILL NO. 347

As Amended by House Committee of the Whole

Brief*

House Sub. for SB 347, as amended, would enact the Attracting Powerful Economic Expansion Act (Act). The Act would establish new economic development incentives targeted at specific industries to firms that agree to invest at least $1.0 billion within the State of Kansas and at their suppliers.

The bill would be in effect upon publication in the *Kansas Register*.

The bill would prohibit the Secretary from entering into any agreement with a qualified firm or supplier on and after May 1, 2024 (Section 15).

Definitions (Section 1)

The bill would define terms used in the Act.

Qualified Firm

The bill would define a "qualified firm" as a for-profit business establishment subject to state income, sales, or property tax that is engaged in one or more of the following industries as determined by the Secretary of Commerce (Secretary):

- Advanced manufacturing;
- Aerospace;

*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

- Distribution, logistics, and transportation;
- Food and agriculture; or
- Professional and technical services.

The bill provides exceptions to the definition by stating that a for-profit business establishment in any industry is eligible as a qualified firm if it is seeking benefits to relocate or establish its national corporate headquarters within the state. However, the bill would exclude all business establishments engaged in the following activities from the definition of “qualified firm”:

- Mining;
- Swine Production;
- Ranching; or
- Gaming.

Qualified Supplier

The bill would define a “qualified supplier” as a supplier of components, sub-assemblies, chemicals or other process-related tangible goods located in Kansas and owned by one of the following entities:

- An individual, any partnership, association, limited liability corporation, or corporation domiciled in Kansas; or

- Any business that operates in the state of Kansas for the purpose of supplying a qualified firm.

Qualified Business Facility

The bill would define a “qualified business facility” as a building or complex of buildings satisfying the following requirements:

- The facility is for use by qualified firm in operation of a revenue-producing enterprise; and

- If the facility was acquired or leased by the qualified firm or qualified supplier from another person or persons, that said facility was not being used in the operation of a revenue-producing enterprise that is the same or similar to the revenue-producing enterprise of the qualified firm.

The definition would exclude any facilities or portions of facilities held by the qualified firm or qualified supplier and leased to another person or persons and not being utilized by the qualified firm or qualified supplier in the operation of a revenue-producing enterprise.

Qualified Business Facility Employee

The bill would define a "qualified business facility employee" as an individual employed full-time and scheduled to work for an average minimum of 30 hours per week, employed for at least three consecutive months on the last day of the period covered by a Kansas Department of Labor quarterly wage report and unemployment tax return.

Qualified Business Facility Investment or Qualified Investment

The bill would define a "qualified business facility investment" or "qualified investment" as the total value of the real and tangible personal property of the qualified firm or qualified supplier during a taxable year excluding inventory or property held for sale to customers in the ordinary course of business.

The value of the property would be defined to be the property's original cost if the property is owned by the qualified firm or qualified supplier or eight times the net annual rental rate if the property is leased by the qualified firm less any rental rate the qualified firm or qualified supplier receives from subrentals.

Other Definitions

The bill would define various other terms, including "commitment to invest," "facility," "headquarters," "new employee," "total payroll cost," and "training and education eligible expense."

Attracting Powerful Economic Expansion Program (Section 2)

The bill would establish the Attracting Powerful Economic Expansion (APEX) Program under the purview of the Secretary for the purpose of attracting large capital investments in new facilities and operations by businesses engaged in specified industries, establishing new national headquarters in Kansas, and encouraging the development of Kansas-based supply chains.

APEX would provide tax incentives to qualified firms who agree to invest at least $1 billion in the State of Kansas within a five-year period and to no more than five of the qualified firm's qualified suppliers.

The Secretary would be permitted to enter into one agreement each in calendar years 2022 and 2023. Prior to offering any agreement for incentives under the Act, the Secretary would be required to obtain approval from the State Finance Council.

The bill would authorize the Secretary of Commerce or the Secretary of Revenue to adopt rules and regulations for implementation of the Act.

Qualified Firms (Section 2)

Requirements

To receive incentives under the APEX Program, the bill would require a business to meet the definition of a qualified firm and fulfill the following requirements:

- Submit an application to the Secretary, in the form of and with the information required by the Secretary;
- If requested by the Secretary, submit a certificate of intent to invest which, if required by the Secretary, must contain a date investment would commence;
- Commit to a qualified business investment of at least $1 billion in a qualified business facility to be completed within five years;
- Complete the project and commence commercial operations within five years;
- Enter into a binding agreement with the Secretary that includes the commitments required by the bill;
- Obtain and submit a bond to the Secretary in the amount required to cover primary construction of the building or buildings for the qualified business facility if the qualifying firm or qualifying business facility does not meet the minimum investment grade rating determined by the Secretary; and
- Commit to repayment of any benefit or benefits received connected to or associated with a term or condition of the agreement that has been breached, as determined by the Secretary, and the forfeiture of any such earned benefits and the suspension or cessation of future benefits for as long as the breach is not corrected. The Secretary

would be required to report any material breach to the State Finance Council within 14 days of becoming aware of the breach.

Incentives

The qualified firm meeting the above requirements would be eligible for the following incentives, as approved by the Secretary:

- Investment tax credits;
- Reimbursement of a percentage of total payroll;
- Reimbursement of a percentage of eligible employee training and education expenses;
- Reimbursement of a percentage of relocation incentives and expenses provided by a qualified firm to incentivize employees to relocate to Kansas; and
- Sales tax exemption for construction costs of the qualified business facilities.

The bill would state that a qualified firm's confidential financial information, trade secrets, or other information that would put the firm at a disadvantage in the marketplace, or would significantly interfere with the purposes of the Act as determined by the Secretary, shall not be subject to disclosure but shall be made available upon request to the Legislative Division of Post Audit. These exclusions from the provisions of the Kansas Open Records Act would expire on July 1, 2027, unless reviewed and re-enacted by the Legislature.

In addition to any other repayment provisions under the Act, the bill would require any qualified firm that receives incentives under the Act to repay a percentage of benefits received under the Act if it relocates outside of the state in the

11th through 15th years following the year the qualified firm entered into the agreement with the Secretary. The percentage repayments would be:

- 100 percent if the relocation occurs in the 11th year;
- 80 percent if the relocation occurs in the 12th year;
- 60 percent if the relocation occurs in the 13th year;
- 40 percent if the relocation occurs in the 14th year; and
- 20 percent if the relocation occurs in the 15th year.

The repayment requirement would be waived if the qualified firm sells the qualified business facility to another business and the operations of the qualified business facility are substantially continued in Kansas.

Qualified Suppliers (Section 2)

Requirements

The bill would allow a qualified firm to select up to five eligible, qualified suppliers that meet the following requirements to be eligible to receive incentives for up to five successive years under the Act:

- Submit an application to the Secretary in the form and manner designated by the Secretary, and including all information requested by the Secretary;
- Submit a certificate of intent to invest in a qualified business facility which includes when investment will begin;

- Make more than $10 million of sales to the qualified firm within the taxable year for which benefits are being sought, unless this requirement is waived by the Secretary due to "exceptional circumstances"; and

- Provide information to the Secretary such as, but not limited to:
  - Evidence establishing sales of more than $10 million to the qualified firm;
  - Date when operations at the qualified business facility began; and
  - Sales to the qualified business facility by the qualified supplier.

The selection of qualified suppliers would not be permitted to change unless a qualified supplier breaches the terms of an agreement pursuant to the Act and is disqualified by the Secretary. If the Secretary approves the application, the bill would require the qualified supplier to enter into a binding agreement with the Secretary establishing the terms and conditions of the agreement. The agreement would be required to, at a minimum, contain the requirements and conditions of the Act and require the qualified supplier to provide the Secretary with evidence showing the amount of sales made to the qualified firm each year. The bill would require the agreement be entered into before any benefits under the Act are provided to the qualified supplier.

No benefits will be provided to the qualified supplier until the qualified firm has commenced operation at the qualified business facility. Should the qualified business facility fail to commence operations then all benefits to the qualified supplier would be forfeit.

Incentives

Qualified suppliers would be eligible for the following incentives:

- Investment tax credit;
- Partial retention of employee withholding tax;
- Reimbursement of a percentage of eligible employee training and education expenses;
- Partial real property tax exemption for qualified business facilities; and
- Sales tax exemption for construction materials used in the qualified business facility.

The bill would require qualified suppliers to meet the individual requirements of each incentive in order to receive benefits. Furthermore, the bill would state that qualified suppliers that meet the requirements of the investment tax credit shall be required to commit to repay all benefits received under the Act should the qualified supplier fail to meet the requirements of the Act, rules and regulations, or terms and conditions of the agreement entered into with the Secretary.

Qualified Firms and Qualified Suppliers (Section 2)

Conditions

The bill would disqualify a qualified firm or qualified supplier approved by the Secretary of Commerce from participating in the following programs:

- Promoting Employment Across Kansas (PEAK) Program;

- High Performance Incentive Program (HPIP);
- Kansas Industrial Training (KIT) Program;
- Kansas Industrial Retraining (KIR) Program;or
- Any other economic development program or fund administered by the Secretary of Commerce.

The qualified firm or supplier would also be required to cooperate with any audit undertaken by the Secretary of Revenue and to provide to the Secretary of Commerce the following information:

- Information required for publication in the Economic Development Incentive Program Database as prescribed by law;
- Information reasonably required for the Secretary's report on the APEX Program to the Governor and specified committees of the Legislature;
- Information required by the Secretary of Commerce for the Secretary's annual review or by the Secretary of Revenue that pertain to the qualified firm's eligibility for benefits; and
- Reasonable access by the Secretary or Department of Commerce staff to the qualified business facility during business hours.

The bill would require the Secretary of Commerce to conduct an annual review of the activities of qualified firms and qualified suppliers to ensure compliance with the provisions of the Act, rules and regulations adopted by the Secretary, and the agreement entered into by the qualified business. Upon review, the bill would direct the Secretary of Commerce to certify to the Secretary of Revenue that the qualified firm is eligible for benefits.

The Secretary of Revenue would be tasked, in consultation with the Secretary of Commerce, to develop a form to be completed annually by qualified firms and qualified suppliers that receive benefits.

Investment Tax Credit (Section 3)

The bill would authorize eligibility for both qualified firms and qualified suppliers to receive investment tax credits.

Incentive

Beginning in tax year 2022, a qualified firm or supplier that makes a qualified business investment in a qualified business facility and meets all requirements in the Act would be allowed a credit for such investment against that entity's income tax, premium tax, privilege fees, or privilege tax.

The bill would specify the credit shall be earned each taxable year based upon the amount of the qualified investment made within the taxable year. For qualified firms, the credit would be up to 15.0 percent of the qualified investment within the taxable year, as determined by the Secretary of Commerce, and would be divided into 10 equal installments to be claimed in 10 successive tax years. The bill would permit the State Finance Council to approve installments or portions of installments to be in advance of the 10 successive years. Such approval would require an affirmative vote of the Governor and a majority of the legislative members of the State Finance Council. For qualified suppliers, the credit would be 5.0 percent for the first $50 million in qualified investment and an additional 1.0 percent for each additional $10 million in qualified investment, up to a maximum of $100 million.

The bill would provide that the Secretary of Commerce would be required to set forth the percentage of the tax credit that may be refundable to the qualified firm or qualified supplier in an agreement entered into between the Secretary and the qualified firm or qualified supplier. The base percentage that would be refundable would be 50 percent. The Secretary would be permitted to provide additional percentage to be refundable up to 100 percent, depending on the qualified firm meeting specified goals set forth in the agreement between the Secretary and the qualified firm. The installment portion of the tax credit that is not refunded would be permitted to be carried forward up to ten years.

The bill would require the Secretary of Commerce, in determining the percentage of the tax credit earned, to consider the following factors:

- Extent of prospective new employment;
- Quality of new jobs and wage or salary levels;
- Total amount of investment;
- Potential for development of the industry within the state; and
- Potential for ancillary industry development and indirect economic development.

The bill would also require the Secretary to base the determination of the percentage of the tax credit earned on the qualified firm or qualified supplier meeting goals that would be required to be agreed to with the Secretary, including targets for the:

- Creation of new jobs, including jobs for suppliers;
- Benefit to local, regional, or state economy, including the development of suppliers in Kansas;
- Amount of capital investment;
- Benefit to the development of the qualified firm's industry in Kansas;

- Employment, retention, and attraction of employees to remain residents of or relocate to Kansas; or

- Other measures consistent with the purposes of the Act.

Conditions

The bill would require the Secretary of Commerce to certify the eligibility of the qualified firm or supplier in each taxable year prior to the Secretary of Revenue issuing tax credits to the qualified firm.

Should the tax credits of the qualified firm or supplier be disallowed in whole or in part by the Secretary of Commerce or the Secretary of Revenue, the bill would state the qualified firm would be liable for repayment to the State of the amount disallowed.

In order to claim the credits, the bill would require the qualified firm or supplier to provide the following information pursuant to KSA 79-32,243 as part of their tax return claiming the credits:

- Actual jobs created as a direct result of the expenditures on which such credit claims are based;

- Additional payroll generated as a direct result of the expenditures on which such credit claim is based;

- Actual jobs retained as a direct result of the expenditures on which such credit claim is based;

- Additional revenue generated as a direct result of the expenditures on which such credit claim is based;

- Additional sales generated as a direct result of the expenditures on which such credit claim is based;
- Total employment and payroll at the end of the tax year in which the credits are claimed; and
- Further information as required by the Secretary of Revenue.

The bill would prohibit the denial of investment tax credits based solely on the information provided.

Partial Retention of Payroll Withholding Tax (Section 4)

The bill would specify only qualified suppliers are eligible to receive a partial retention of employee payroll withholding taxes.

Incentive

The bill, starting in taxable year 2022, would allow a qualified supplier who meets the requirements of the Act to be eligible to retain up to 65.0 percent of its Kansas payroll withholding taxes for up to ten successive years. The bill would authorize the Secretary of Commerce to determine the percentage of Kansas payroll withholding taxes retained and duration of the benefit.

The bill would require the Secretary to consider, at a minimum, the following factors when determining the amount of benefits for a qualified supplier:

- Extent of prospective new employment;
- Quality of new jobs and wage or salary levels;
- Total amount of investment;

- Potential for development of the industry within the state; and
- Other measures or goals of the Secretary consistent with the purposes of the Act.

The bill would prohibit any payroll tax retention by a qualified supplier until after the qualified firm that selected the qualified supplier has commenced commercial operations as established in the Act.

Third-party Employer Eligibility

The bill would authorize a qualified supplier to utilize or contract with a third-party employer and still receive payroll tax retention benefits. The bill would require the third-party employer to meet the following criteria:

- Serve as the legal employer of the qualified supplier's employees providing service to the qualified supplier;
- Perform such services in Kansas; and
- Be subject to the Kansas Withholding and Declaration of Estimated Tax Act.

Agreement

To receive the payroll tax retention benefit, the qualified supplier would be required to submit an application to the Secretary of Commerce and provide all information requested by the Secretary. If the Secretary approves the request, an agreement would be established between the Secretary and the qualified supplier to include, but not be limited to, the following elements:

- Terms and conditions of the Secretary;

- Percentage of payroll withholding taxes to be retained each year; and
- Any requirements or performance targets as determined by the Secretary.

Should the qualified supplier breach the agreement or the conditions of the Act, the bill would require the qualified supplier to pay the State an amount equal to all Kansas payroll withholding taxes retained by the qualified supplier or remitted to the qualified supplier by a third-party.

Certification

The bill would require the Secretary of Commerce to annually certify the following information to the Secretary of Revenue:

- That the qualified supplier is eligible to receive benefits under the Act and the terms of agreement;
- Number of employees;
- Amount of gross wages being paid to each employee; and
- Percentage of payroll withholding taxes to be retained.

The bill would require the qualified supplier to submit the amount of Kansas payroll withholding tax being retained by the qualified supplier to the Kansas Department of Revenue.

Reimbursement of Total Payroll (Section 5)

Under the bill, only qualified firms would be eligible to receive partial reimbursement for total payroll costs.

Incentive

Starting July 1, 2022, the bill would allow a qualified firm to receive partial reimbursement of total payroll costs paid to the employees of the qualified business facility during a taxable year, as approved by the Secretary of Commerce.

The bill would limit the amount of the payroll reimbursement for each taxable year at 7.5 percent of the total payroll cost of the qualified firm in the taxable year for up to 10 successive years. The percentage of reimbursement and number of successive years would be determined by the Secretary. The Secretary would be permitted to increase the percent of the total payroll cost to be reimbursed up to 10.0 percent with approval of the State Finance Council, which would require an affirmative vote of the Governor and the majority of the legislative members of the State Finance Council.

Eligibility

The qualified firm would become eligible for such reimbursements when the Secretary determines the qualified firm met the following requirements:

- Enters into an agreement with the Secretary; and
- Commences construction of the qualified business facility; or
- Commences commercial operations at the qualified business facility.

Requirements

The bill would require the qualified firm, to be eligible, to must meet the eligibility requirements of the Act and enter into an agreement with the Secretary that details the percentage of reimbursement, number of successive years, and such terms and conditions determined by the Secretary. The bill would prohibit a claim for reimbursement for payroll costs from being paid unless the following requirements are met:

- The qualified firm has met all requirements in the Act;
- The Secretary has certified that the qualified firm has met all requirements for the taxable year being claimed; and
- The qualified firm has filed a claim with the Secretary in the form and manner required by the Secretary including evidence showing the amount of total payroll costs for the year being claimed.

Payment

The bill would require all payroll reimbursements to be paid from the Attracting Powerful Economic Expansion Payroll Incentive Fund and would be subject to appropriations. If the qualified firm breaches the terms and conditions of the agreement for incentives, the reimbursement of total payroll costs would be required to be repaid to the state.

Attracting Powerful Economic Expansion Payroll Incentive Fund (Section 6)

The bill would establish the Attracting Powerful Economic Expansion Payroll Incentive Fund within the state treasury. The fund would be administered by the Secretary of Commerce and used only for partial reimbursement of qualified firms for total payroll costs. Expenditures from the fund would be subject to appropriations.

Reimbursement of Eligible Employee Training and Education Expenses (Section 7)

Both qualified firms and qualified suppliers would be eligible to receive reimbursements for eligible employee training and education expenses.

Incentive

Starting July 1, 2022, the bill would authorize a qualified firm or qualified supplier that meets the requirements of the Act and enters into an agreement with the Secretary of Commerce to be eligible for a reimbursement of up to 50.0 percent of training and education eligible expenses, of which travel expenses would have a maximum allowance of $60 per day for meals and $150 per night for lodging, for the purpose of educating and training new employees. Each qualified firm would be eligible for up to $5 million annually for up to five successive years, as determined by the Secretary. Each qualified supplier would be eligible to receive up to $250,000 annually.

Qualified Firms Eligibility

Under the bill, qualified firms would be eligible for reimbursement commencing with the year in which the firm enters into an agreement with the Secretary, commences construction of its qualified business facility, or commences commercial operation of its qualified business facility.

Qualified Supplier Eligibility

Under the bill, qualified suppliers would be eligible beginning in the year in which the qualified firm that selected the qualified supplier for eligibility commences commercial operation at the qualified business facility. Only training and education expenses for new employees employed in Kansas would be eligible for reimbursement.

Requirements

The bill would require qualified firms and suppliers to annually submit an application to the Secretary, in the manner of and with information requested by the Secretary, in order to be certified as eligible to receive the reimbursement. The bill would prohibit reimbursements from being issued unless the qualified firm or supplier was certified by the Secretary as meeting all the requirements of the Act.

The percentage of reimbursement and number of successive years would be determined by the Secretary. When making the determination, the bill would require the Secretary to take into account the following factors:

- Extent of prospective new employment;
- Quality of new jobs and wage or salary levels;
- Total amount of investment;
- Potential for development of the industry within the state;
- Potential for ancillary industry development and indirect economic development; and
- Other measures or goals of the Secretary consistent with the purposes of the Act.

Payment

All reimbursements would be made from the Attracting Powerful Economic Expansion New Employee Training and Education Fund and would be subject to appropriation. If a qualified firm or qualified supplier breaches the terms and conditions of the agreements for incentives, reimbursements to such firm or supplier would be required to be repaid to the state.

Attracting Powerful Economic Expansion New Employee Training and Education Fund (Section 8)

The bill would establish the Attracting Powerful Economic Expansion New Employee Training and Education Fund within the state treasury. The fund would be administered by the Secretary of Commerce for the purpose of reimbursing qualified firms and suppliers for eligible education and training expenses under the Act. The fund would be subject to appropriation.

Sales Tax Exemption (Section 9)

Both qualified firms and qualified suppliers would be eligible to receive sales tax exemptions under the Act.

Incentive

Under the bill, on and after July 1, 2022, the qualified firm or qualified supplier would receive a sales tax exemption for all tangible personal property or services purchased by the qualified firm or supplier for the purpose of constructing, reconstructing, enlarging, or remodeling a qualified business facility.

Eligibility

Qualified firms would become eligible for the exemption on the day they commence construction of the qualified business facility unless an earlier date is provided in the agreement with the Secretary.

Qualified suppliers would be eligible upon selection by the qualified firm pursuant to the Act.

Both qualified firms and qualified suppliers would be required to be approved by, and enter into an agreement with, the Secretary. The exemption would be valid until either the completion of construction of the qualified business facility or the date specified in the agreement with the Secretary.

Conditions

The bill would require the Secretary of Commerce to provide notice to the Secretary of Revenue regarding any approval of sales tax exemptions. The Secretary of Revenue shall issue no exemptions to a qualified firm or supplier until certification from the Secretary of Commerce is received.

All sales tax exemptions shall be revoked by the Secretary of Revenue upon notification from the Secretary of Commerce that a qualified firm or supplier has been disapproved by the Secretary of Commerce. If the qualified firm or supplier breaches the terms and conditions of the agreement for incentives, the amount of sales tax exempted would be required to be repaid to the state.

Reporting Requirements (Section 10)

The bill would require the Secretary to transmit a report based upon information received from qualified firms and qualified suppliers receiving benefits on or before January 31 of each year to the following entities:

- The Office of the Governor;
- The Senate Committee on Assessment and Taxation;
- The Senate Committee on Commerce;
- The House Committee on Taxation;
- The House Committee on Commerce, Labor and Economic Development; and

- Any successor committees to those listed in the Act.

The report would be based on information received by the Secretary from qualified firms and suppliers and include, but not be limited to, the following information:

- Names of qualified firms or qualified suppliers;
- Types of qualified firms or qualified suppliers utilizing the Act;
- Location of such qualified firms and suppliers and their location, description, and economic impact upon the State of Kansas;
- Cumulative number of new employees hired and the number of new employees hired in that calendar year;
- Wages paid to new employees;
- Annual and cumulative amount of investments made;
- Annual amount of each benefit provided under the Act;
- Estimated net state fiscal impact, including direct and indirect new state taxes derived from new employees;
- An estimate of the multiplier effect on the Kansas economy;
- Any material defaults by a qualified firm or qualified supplier of the terms of any agreement for incentives under the Act;

- The percentage of the business of a qualified supplier that is with the qualified firm that designated the qualified supplier; and
- The number of employees of the qualified firm and qualified supplier residing in Kansas and every other state.

The bill would also require the Secretary to report the number of projects that may qualify for incentives under the Act to the chairpersons of the Senate Committee on Commerce and the House Committee on Commerce, Labor and Economic Development on a quarterly basis.

Corporate Tax Rate Adjustment (Section 11)

Beginning in fiscal year 2022, the bill would require the Secretary of Commerce to certify to the Secretary of Revenue, Director of the Budget, and Director of Legislative Research of the entering into an initial agreement for incentives under the Act by a qualified firm and commencement of construction on a qualified business facility.

When certification is received, the bill would require the Secretary of Revenue to reduce the corporate tax rate for the next tax year by 0.5 percent, until reduced to 0.0 percent.

The Secretary of Revenue would be required to report any reduction in corporate income tax rates to the following individuals:

- Chairperson of the Senate Committee on Assessment and Taxation;
- Chairperson of the Senate Committee on Commerce;
- Chairperson of the House Committee on Commerce, Labor and Economic Development;

- Chairperson of the House Committee on Taxation; and
- The Governor.

The bill would require notice of the rate reduction to be published in the *Kansas Register* prior to September 15 of the calendar year before the tax year in which the reduction would take effect.

Relocation Costs and Incentives (Section 12)

Under the bill, qualified firms would be eligible for annual reimbursement of up to 50.0 percent of relocation incentives and expenses provided to incentivize employees who are not Kansas residents to relocate their primary residence to Kansas and become Kansas residents. Reimbursements would be limited to $1 million per year per qualified firm and would be permitted for up to 10 successive years. Reimbursements would be subject to appropriations and would be paid from the Attracting Powerful Economic Expansion Kansas Residency Incentive Fund.

In order to seek reimbursement, qualified firms would be required to submit to the Secretary a Kansas residency incentive plan describing the expected costs of each component of the plan. The reimbursement percentage would be subject to the qualified firm meeting goals for incentivizing employees to become Kansas residents.

If the qualified firm breaches any of the terms or conditions of the agreement under the Act, the qualified firm would be required to remit any reimbursements to the state.

Attracting Powerful Economic Expansion Kansas Residency Incentive Fund (Section 13)

The bill would establish the Attracting Powerful Economic Expansion Kansas Residency Incentive Fund within the state treasury. The fund would be administered by the Secretary of Commerce for the purpose of reimbursing qualified firms for expenses incurred in a Kansas residency incentive plan for employees under the Act. The fund would be subject to appropriations.

Tax Amendments (Section 14 & 15)

The bill would amend law regarding corporate income tax by stating that the rate is subject to adjustment based upon provisions within the Act.

The bill would also amend law to exempt from the collection of sales tax all sales of tangible personal property or services purchased by a qualified firm or qualified supplier for the purpose of constructing, reconstructing, enlarging, or remodeling a qualified business facility.

The exemption would require the qualified firm or qualified supplier to obtain a tax exemption certificate to provide to all suppliers in order to receive said exemption.

The bill would require the contractor, upon completion of the project, to provide the qualified firm or supplier with a sworn statement that all purchases made were entitled to sales tax exemption. The bill would require the contractor to retain copies of all invoices for five years and be subject to audit by the Director of Taxation.

Any contractor, agent, employee, or subcontractor who makes a purchase under the certification of exemption for purposes other than the construction of the qualified business facility would be deemed guilty of a misdemeanor and subject to penalties.

Background

The bill was introduced by the Senate Committee on Commerce at the request of a representative of the Department of Commerce.

Senate Committee on Commerce

In the Senate Committee hearing on January 19 and January 20, 2022, **proponent** testimony was provided by representatives of the Department of Commerce, Chamber of Lawrence, Greater Wichita Partnership, Kansas Chamber, Overland Park Chamber of Commerce, and Shawnee Chamber of Commerce. Proponents generally stated the need for the Act in order to compete for large economic development projects currently going to other states with robust incentive programs. Written-only proponent testimony was provided by representatives of Greater Hutch, Greater Kansas City Chamber of Commerce, Greater Topeka Chamber of Commerce, Kansas Board of Regents, Kansas Economic Development Alliance, Lenexa Chamber of Commerce, Pittsburg Area Chamber of Commerce, Salina Area Chamber of Commerce, Southeast Kansas Regional Planning Commission, and Wyandotte Economic Development Council.

Opponent testimony was provided by a representative of the Kansas Policy Institute. The opponent generally stated concerns for the potential cost to the state as well as the lack of fairness provided to existing Kansas businesses.

No neutral testimony was provided.

The Senate Committee adopted amendments to:

- Remove the refundable element of the Investment Tax Credit;

- Add a 0.5 percent corporate tax reduction for the taxable year following the receipt of any benefits by a qualified firm or supplier under the Act; and

- Make various technical changes to the bill.

Senate Committee of the Whole

The Senate Committee of the Whole amended the bill to:

- Establish a sunset of March 31, 2023, on and after which no new agreements with a qualified firm or qualified supplier may be entered into by the Secretary of Commerce;

- Define the term “foreign trade zone”;

- Amend the definition of “qualified supplier”;

- Amend requirements under which a qualified firm must repay benefits;

- Clarify qualified firms and suppliers are disqualified from receiving benefits under any other economic development program administered by the Department of Commerce; and

- Clarify that qualified suppliers must be certified by the Secretary of Commerce prior to receiving the sales tax exemption.

House Committee on Commerce, Labor, and Economic Development

In the House Committee hearing, **proponent** testimony was provided by representatives of the Department of Commerce, Chamber of Wichita, Greater Kansas City Chamber of Commerce, Kansas Chamber of Commerce, Overland Park Chamber of Commerce, and Shawnee Chamber of Commerce. Proponents stated the bill was necessary for Kansas to compete with other states for large economic development projects and requested the House Committee make the investment tax credit refundable.

Written-only proponent testimony was provided by representatives of the Chamber of Lawrence, Civic Council of Greater Kansas City, Greater Hutch Economic Development, Greater Topeka Chamber of Commerce, Greater Wichita Partnership, Lenexa Chamber of Commerce, METL: The Chambers of Commerce of Manhattan, Emporia, Topeka, and Lawrence, NetChoice, Olathe Chamber of Commerce, and Wyandotte Economic Development Council.

Opponent testimony was provided by a representative of the Kansas Policy Institute. The opponent stated concerns for the potential cost to the state to pursue a single business investment and concerns regarding the potential adverse consequences to existing Kansas businesses.

Written-only neutral testimony was provided by a representative of the Mercatus Center at George Washington University.

The House Committee amended the bill to eliminate a partial property tax incentive, add a relocation incentive, add requirements for State Finance Council approval of certain incentives and the initial offer of incentives, expand the investment tax credit period from three to ten years, change the definition of “qualified business facility employee,” require qualified suppliers to be located in Kansas, extend the sunset of the program to May 1, 2024, limit the number of agreements for incentives that may be entered into by the Secretary to one per calendar year, expand benefit repayment provisions, reduce the maximum amount of employee training and education expenses for qualified suppliers, reduce and limit the investment tax credit for qualified suppliers, provide for refundability of the investment tax credit, reduce the amount of payroll reimbursement for qualified firms absent State Finance Council approval, expand the reporting requirements, change the trigger for corporation income tax rate reduction from a firm receiving benefits to a firm entering into an agreement for benefits, and various technical and clarifying amendments.

House Committee of the Whole

The House Committee of the Whole amended the bill to allow installments or portions of installments of the refundable investment tax credit to be taken earlier than the 10 succeeding tax years with approval of the State Finance Council, to reduce the maximum allowable training-related travel expenses, and to make technical amendments.

Fiscal Information

No fiscal note was available for the bill at the time of House Committee of the Whole action.

Commerce; taxation; economic development; attracting powerful economic expansion act; incentives; corporation income tax