

## HOUSE BILL No. 2463

By Committee on Commerce and Economic Development

1-17

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1 AN ACT concerning employment; relating to employment requirements in  
2 certain state contracts; relating to employment requirements for certain  
3 state tax benefits; amending K.S.A. 2011 Supp. 12-17,166, 74-50,131,  
4 74-50,212, 79-32,154 and 79-32,243 and repealing the existing  
5 sections.  
6

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

8 New Section 1. (a) As used in this section:

9 (1) "Division of purchasing" means the division of purchasing of the  
10 department of administration.

11 (2) "Kansas worker" means any individual having a residence in  
12 Kansas as determined by the employment records of such individual held  
13 by the individual's employer.

14 (3) "State agency" means any state office or officer, department,  
15 board, commission, institution or bureau, or any agency, division or unit  
16 thereof.

17 (4) "State contract" means any agreement entered into on and after  
18 January 1, 2013, by a state agency for the procurement of services with an  
19 annual cost to the state agency of at least \$100,000, excluding lease  
20 agreements, lease-purchase agreements and agreements entered into solely  
21 for the acquisition of goods or commodities by the state agency.

22 (b) Any contractor entering into a state contract, including any  
23 subcontractors contracted by such contractor to perform work required by  
24 such state contract, shall employ a sufficient number of Kansas workers  
25 such that at least 70% of the employees assigned by such contractor to  
26 perform work under the state contract shall be Kansas workers. An  
27 employee shall be considered assigned to perform work under the state  
28 contract if the employee performs any work that is directly related to  
29 fulfilling the contractor's obligations under the state contract regardless of  
30 the proportion of such work to the employee's regular employment duties.

31 (c) All state agencies shall provide a copy of any state contract to the  
32 division of purchasing for verification that the contractor is in compliance  
33 with this section. A contractor subject to the requirements of this section  
34 shall provide any personnel information to the division of purchasing as  
35 required by the secretary of administration. The division of purchasing  
36 shall determine if the contractor's employees are Kansas workers and

1 verify whether the contractor is in compliance with this section. The  
2 division of purchasing shall submit a report to the state agency contracting  
3 with the contractor stating whether the contractor is in compliance with  
4 this section.

5 (d) A determination by the division of purchasing that a contractor is  
6 not in compliance with this section is subject to review pursuant to the  
7 Kansas administrative procedure act upon request by the contractor. Any  
8 contractor aggrieved by the final decision under the Kansas administrative  
9 procedure act may seek review of such decision under the Kansas judicial  
10 review act.

11 (e) An employee who performs work under a state contract and is not  
12 a Kansas worker may be exempt from the requirements of this section if  
13 such employee provides expertise in a field necessary to fulfillment of the  
14 contractor's contractual obligations, and such expertise cannot reasonably  
15 be provided by a Kansas worker. A contractor may submit an application  
16 to the division of purchasing for an exemption from this section for such  
17 employees classified as experts. Such application shall include the name,  
18 residence, position and job description of the employee, a detailed  
19 explanation as to why such employee is an expert, a detailed explanation  
20 as to why such expertise cannot reasonably be provided by a Kansas  
21 worker, and such other information as required by the secretary of  
22 administration. The division of purchasing shall determine whether such  
23 employee shall be exempt from this section and shall include such  
24 determination in its report to the state agency pursuant to subsection (c).

25 (f) The secretary of administration shall adopt such rules and  
26 regulations the secretary deems necessary to implement and enforce the  
27 provisions of this section.

28 Sec. 2. K.S.A. 2011 Supp. 12-17,166 is hereby amended to read as  
29 follows: 12-17,166. (a) One or more projects may be undertaken by a city  
30 or county within an established STAR bond project district. Any city or  
31 county proposing to undertake a STAR bond project, shall prepare a STAR  
32 bond project plan in consultation with the planning commission of the city,  
33 and in consultation with the planning commission of the county, if any, if  
34 such project is located wholly outside the boundaries of the city. Any such  
35 project plan may be implemented in separate development stages.

36 (b) Any city or county proposing to undertake a STAR bond project  
37 within a STAR bond project district established pursuant to K.S.A. 2011  
38 Supp. 12-17,165, and amendments thereto, shall prepare a feasibility  
39 study. The feasibility study shall contain the following:

40 (1) Whether a STAR bond project's revenue and tax increment  
41 revenue and other available revenues under K.S.A. 2011 Supp. 12-17,169,  
42 and amendments thereto, are expected to exceed or be sufficient to pay for  
43 the project costs;

1 (2) the effect, if any, a STAR bond project will have on any  
2 outstanding special obligation bonds payable from the revenues described  
3 in K.S.A. 2011 Supp. 12-17,169, and amendments thereto;

4 (3) a statement of how the jobs and taxes obtained from the STAR  
5 bond project will contribute significantly to the economic development of  
6 the state and region;

7 (4) visitation expectations;

8 (5) the unique quality of the project;

9 (6) economic impact study;

10 (7) market study;

11 (8) market impact study;

12 (9) integration and collaboration with other resources or businesses;

13 (10) the quality of service and experience provided, as measured  
14 against national consumer standards for the specific target market;

15 (11) project accountability, measured according to best industry  
16 practices;

17 (12) the expected return on state and local investment that the project  
18 is anticipated to produce;

19 (13) a statement concerning whether a portion of the local sales and  
20 use taxes are pledged to other uses and are unavailable as revenue for the  
21 STAR bond project. If a portion of local sales and use taxes is so  
22 committed, the applicant shall describe the following:

23 (A) The percentage of city and county sales and use taxes collected  
24 that are so committed; and

25 (B) the date or dates on which the city and county sales and use taxes  
26 pledged to other uses can be pledged for repayment of bonds; and

27 (14) an anticipated principal and interest payment schedule on the  
28 bond issue.

29 The failure to include all information enumerated in this subsection in  
30 the feasibility study for a STAR bond project shall not affect the validity of  
31 bonds issued pursuant to this act.

32 (c) If the city or county determines the project is feasible, the project  
33 plan shall include:

34 (1) A summary of the feasibility study done as defined in subsection  
35 (b) of this section, and amendments thereto;

36 (2) a reference to the district plan established under K.S.A. 2011  
37 Supp. 12-17,165, and amendments thereto, that identifies the project area  
38 that is set forth in the project plan that is being considered;

39 (3) a description and map of the project area to be redeveloped;

40 (4) the relocation assistance plan as described in K.S.A. 2011 Supp.  
41 12-17,172, and amendments thereto;

42 (5) a detailed description of the buildings and facilities proposed to be  
43 constructed or improved in such area; and

1 (6) any other information the governing body of the city or county  
2 deems necessary to advise the public of the intent of the project plan.

3 (d) A copy of the STAR bond project plan prepared by a city shall be  
4 delivered to the board of county commissioners of the county and the  
5 board of education of any school district levying taxes on property within  
6 the STAR bond project area. A copy of the STAR bond project plan  
7 prepared by a county shall be delivered to the board of education of any  
8 school district levying taxes on property within the STAR bond project  
9 area.

10 (e) Upon a finding by the planning commission that the STAR bond  
11 project plan is consistent with the intent of the comprehensive plan for the  
12 development of the city, and a finding by the planning commission of the  
13 county, if any, with respect to a STAR bond project located wholly outside  
14 the boundaries of the city, that the STAR bond project plan is consistent  
15 with the intent of the comprehensive plan for the development of the  
16 county, the governing body of the city or county shall adopt a resolution  
17 stating that the city or county is considering the adoption of the STAR  
18 bond project plan. Such resolution shall:

19 (1) Give notice that a public hearing will be held to consider the  
20 adoption of the STAR bond project plan and fix the date, hour and place of  
21 such public hearing;

22 (2) describe the boundaries of the STAR bond project district within  
23 which the STAR bond project will be located and the date of establishment  
24 of such district;

25 (3) describe the boundaries of the area proposed to be included within  
26 the STAR bond project area; and

27 (4) state that the STAR bond project plan, including a summary of the  
28 feasibility study, market study, relocation assistance plan and financial  
29 guarantees of the prospective developer and a description and map of the  
30 area to be redeveloped or developed are available for inspection during  
31 regular office hours in the office of the city clerk or county clerk,  
32 respectively.

33 (f) (1) The date fixed for the public hearing to consider the adoption  
34 of the STAR bond project plan shall be not less than 30 nor more than 70  
35 days following the date of the adoption of the resolution fixing the date of  
36 the hearing.

37 (2) A copy of the city or county resolution providing for the public  
38 hearing shall be by certified mail, return receipt requested, sent by the city  
39 to the board of county commissioners of the county and by the city or  
40 county to the board of education of any school district levying taxes on  
41 property within the proposed STAR bond project area. Copies also shall be  
42 sent by certified mail, return receipt requested to each owner and occupant  
43 of land within the proposed STAR bond project area not more than 10 days

1 following the date of the adoption of the resolution. The resolution shall be  
2 published once in the official city or county newspaper not less than one  
3 week nor more than two weeks preceding the date fixed for the public  
4 hearing. A sketch clearly delineating the area in sufficient detail to advise  
5 the reader of the particular land proposed to be included within the STAR  
6 bond project area shall be published with the resolution.

7 (3) At the public hearing, a representative of the city or county shall  
8 present the city's or county's proposed STAR bond project plan. Following  
9 the presentation of the STAR bond project area, all interested persons shall  
10 be given an opportunity to be heard. The governing body for good cause  
11 shown may recess such hearing to a time and date certain, which shall be  
12 fixed in the presence of persons in attendance at the hearing.

13 (g) The public hearing records and feasibility study shall be subject to  
14 the open records act, K.S.A. 45-215, and amendments thereto.

15 (h) Upon conclusion of the public hearing, the governing body may  
16 adopt the STAR bond project plan by ordinance or resolution passed upon  
17 a two-thirds vote of the members.

18 (i) After the adoption by the city or county governing body of a  
19 STAR bond project plan, the clerk of the city or county shall transmit a  
20 copy of the description of the land within the STAR bond project district, a  
21 copy of the ordinance or resolution adopting the plan and a map or plat  
22 indicating the boundaries of the district to the clerk, appraiser and treasurer  
23 of the county in which the district is located and to the governing bodies of  
24 the county and school district which levy taxes upon any property in the  
25 district. Such documents shall be transmitted following the adoption or  
26 modification of the plan or a revision of the plan on or before January 1 of  
27 the year in which the increment is first allocated to the taxing subdivision.

28 (j) If the STAR bond project plan is approved, the feasibility study  
29 shall be supplemented to include a copy of the minutes of the governing  
30 body meetings of any city or county whose bonding authority will be  
31 utilized in the STAR bond project, evidencing that a STAR bond project  
32 plan has been created, discussed and adopted by the city or county in a  
33 regularly scheduled open public meeting.

34 (k) Any substantial changes as defined in K.S.A. 2011 Supp. 12-  
35 17,162, and amendments thereto, to the STAR bond project plan as  
36 adopted shall be subject to a public hearing following publication of notice  
37 thereof at least twice in the official city or county newspaper.

38 (l) Any STAR bond project shall be completed within 20 years from  
39 the date of the approval of the STAR bond project plan. The maximum  
40 maturity on bonds issued to finance projects pursuant to this act shall not  
41 exceed 20 years.

42 (m) ~~(l) Kansas resident employees shall be given priority~~  
43 ~~consideration for employment in construction projects located in a STAR~~

1 ~~bond project area~~ *On and after January 1, 2013, any contractor, including*  
2 *any subcontractors, contracted to perform work on a STAR bond project*  
3 *shall employ a sufficient number of Kansas workers such that at least 70%*  
4 *of the employees assigned by such contractor to perform such work shall*  
5 *be Kansas workers. An employee shall be considered assigned to perform*  
6 *such work if the employee performs any work that is directly related to*  
7 *fulfilling the contractor's obligations with respect to the STAR bond*  
8 *project regardless of the proportion of such work to the employee's regular*  
9 *employment duties.*

10 (2) *All contractors subject to the provisions of this subsection shall*  
11 *provide any personnel information to the department of commerce as*  
12 *required by the secretary of commerce. The secretary shall notify the city*  
13 *or county proposing the STAR bond project of any contractor that is not in*  
14 *compliance with the provisions of this subsection. Upon such notification*  
15 *the city or county shall either provide the contractor an opportunity to*  
16 *cure the noncompliance within a reasonable time, or terminate the*  
17 *contract with such contractor.*

18 (3) *For the purposes of this subsection, the term "Kansas worker"*  
19 *shall have the same meaning ascribed thereto in section 1, and*  
20 *amendments thereto.*

21 (n) Any developer of a STAR bond project shall commence work on  
22 the project within two years from the date of adoption of the STAR bond  
23 project plan. Should the developer fail to commence work on the STAR  
24 bond project within the two-year period, funding for such project shall  
25 cease and the developer of such project or complex shall have one year to  
26 appeal to the secretary for reapproval of such project and the funding for  
27 it. Should the project be reapproved, the two-year period for  
28 commencement shall apply.

29 Sec. 3. K.S.A. 2011 Supp. 74-50,131 is hereby amended to read as  
30 follows: 74-50,131. Commencing after December 31, 1999: (a) As used in  
31 this act: "Qualified firm" means a for-profit business establishment,  
32 subject to state income, sales or property taxes, identified under the North  
33 American industry classification system (NAICS) subsectors 221, 311 to  
34 339, 423 to 425, 481 to 519, 521 to 721 and 811 to 928 or is identified as a  
35 corporate or regional headquarters or back-office operation of a national or  
36 multi-national corporation regardless of NAICS designation. The secretary  
37 of commerce shall determine eligibility when a difference exists between a  
38 firm's primary business activity and NAICS designation. A business  
39 establishment may be assigned a NAICS designation according to the  
40 primary business activity at a single physical location in the state.

41 (b) In the case of firms in NAICS subsectors 221, 423 to 425, 481 to  
42 519, 521 to 721 and 811 to 928, the business establishment must also  
43 demonstrate the following:

1 (1) More than  $\frac{1}{2}$  of its gross revenues are a result of sales to  
2 commercial or governmental customers outside the state of Kansas; or

3 (2) more than  $\frac{1}{2}$  of its gross revenues are a result of sales to Kansas  
4 manufacturing firms within NAICS subsectors 311 to 339; or

5 (3) more than  $\frac{1}{2}$  of its gross revenues are a result of a combination of  
6 sales described in (1) and (2).

7 (c) For purposes of determining whether one of the average wage  
8 options described in subsection (d) below is satisfied, business  
9 establishments located within a metropolitan county, as defined in K.S.A.  
10 74-50,114, and amendments thereto, will be compared only to other  
11 businesses within that metropolitan county, and business establishments  
12 located outside of a metropolitan county will be compared to businesses  
13 within an aggregation of counties representing the business establishment's  
14 region of the state, which regional aggregation will exclude metropolitan  
15 counties. Such aggregation shall be determined by the department of  
16 commerce.

17 (d) Additionally, a business establishment having met the criteria as  
18 established in subsection (a) or (b), and using the comparison method  
19 described in subsection (c), must meet one of the following criteria:

20 (1) The establishment with 500 or fewer full-time equivalent  
21 employees will provide an average wage that is above the average wage  
22 paid by all firms with 500 or fewer full-time equivalent employees which  
23 share the appropriate NAICS designation.

24 (2) The establishment with 500 or fewer full-time equivalent  
25 employees is the sole firm within its appropriate NAICS designation  
26 which has 500 or fewer full-time equivalent employees.

27 (3) The establishment with more than 500 full-time equivalent  
28 employees will provide an average wage that is above the average wage  
29 paid by firms with more than 500 full-time equivalent employees which  
30 share the appropriate NAICS designation.

31 (4) The establishment with more than 500 full-time equivalent  
32 employees is the sole firm within its appropriate NAICS designation  
33 which has more than 500 full-time equivalent employees, in which event it  
34 shall either provide an average wage that is above the average wage paid  
35 by all firms with 500 or fewer full-time equivalent employees which share  
36 the appropriate NAICS designation, or be the sole firm within its  
37 appropriate NAICS designation.

38 (e) As an alternative to the requirements of subsections (c) and (d), a  
39 firm having met the requirements of subsections (a) or (b), may qualify, if  
40 excluding taxable disbursements to company owners, the business  
41 establishment's annual average wage must be greater than or equal to 1.5  
42 times the aggregate average wage paid by industries covered by the  
43 employment security law based on data maintained by the secretary of

1 labor.

2 (f) For the purposes of this section, the number of full-time  
3 equivalent employees shall be determined by dividing the number of hours  
4 worked by part-time employees during the pertinent measurement interval  
5 by an amount equal to the corresponding multiple of a 40-hour work week  
6 and adding the quotient to the number of full-time employees.

7 (g) (1) *On and after January 1, 2013, a qualified firm shall employ a*  
8 *sufficient number of Kansas workers such that at least 70% of the*  
9 *employees assigned by such qualified firm to perform work in the state of*  
10 *Kansas shall be Kansas workers. An employee shall be considered*  
11 *assigned to perform work in the state of Kansas if the employee performs*  
12 *any work that is performed in Kansas regardless of the proportion of such*  
13 *work to the employee's regular employment duties.*

14 (2) *For the purposes of this subsection, the term "Kansas worker"*  
15 *shall have the same meaning ascribed thereto in section 1, and*  
16 *amendments thereto.*

17 ~~(g)~~ (h) The secretary of commerce shall certify annually to the  
18 secretary of revenue that a firm meets the criteria for a qualified firm and  
19 that the firm is eligible for the benefits and assistance provided under this  
20 act. The secretary of commerce is hereby authorized to obtain any and all  
21 information necessary to determine such eligibility. Information obtained  
22 under this section shall not be subject to disclosure pursuant to K.S.A. 45-  
23 215 *et seq.*, and amendments thereto, but shall upon request be made  
24 available to the legislative post audit division. The secretary of commerce  
25 shall publish rules and regulations for the implementation of this act. Such  
26 rules and regulations shall include, but not be limited to:

27 (1) A definition of "training and education" for purposes of K.S.A.  
28 74-50,132 and amendments thereto.

29 (2) Establishment of eligibility requirements and application  
30 procedures for expenditures from the high performance incentive fund  
31 created in K.S.A. 74-50,133 and amendments thereto.

32 (3) Establishment of approval guidelines for private consultants  
33 authorized pursuant to K.S.A. 74-50,133 and amendments thereto.

34 (4) Establishment of guidelines for prioritizing business assistance  
35 programs pursuant to K.S.A. 74-50,133 and amendments thereto.

36 (5) A definition of "commercial customer" for the purpose of K.S.A.  
37 74-50,133 and amendments thereto.

38 (6) A definition of "headquarters" for the purpose of K.S.A. 74-  
39 50,133 and amendments thereto.

40 (7) Establishment of guidelines concerning the use and disclosure of  
41 any information obtained to determine the eligibility of a firm for the  
42 assistance and benefits provided for by this act.

43 Sec. 4. K.S.A. 2011 Supp. 74-50,212 is hereby amended to read as



1 follows: 74-50,212. (a) In order to qualify for benefits under this act a  
2 qualified company shall:

3 (1) Relocate to Kansas an existing business facility, office,  
4 department or other operation doing business outside the state of Kansas  
5 and locate the jobs directly related to such relocated business facility,  
6 office, department or other operation in Kansas;

7 (2) locate a new business facility, office, department or other  
8 operation in Kansas and locate the jobs directly related to such business  
9 facility, office, department or other operation in Kansas; or

10 (3) expand an existing business facility, office, department or other  
11 operation located in the state of Kansas and locate the jobs directly related  
12 to such business facility, office, department or other operation in Kansas,  
13 except that no payroll withholding taxes shall be retained prior to January  
14 1, 2012.

15 A qualified company may utilize or contract with a third-party  
16 employer to perform services whereby the third-party employer serves as  
17 the legal employer of the new employees providing services to the  
18 qualified company and such services are performed in Kansas and the  
19 third-party employer and the new employees are subject to the Kansas  
20 withholding and declaration of estimated tax act.

21 (b) Any qualified company, approved by the secretary for benefits  
22 pursuant to paragraph (a), that locates its business operation in a  
23 metropolitan county and will hire at least 10 new employees within two  
24 years from the date the qualified company enters into an agreement with  
25 the secretary pursuant to K.S.A. 2011 Supp. 74-50,213, and amendments  
26 thereto, or any qualified company, approved by the secretary for benefits  
27 pursuant to paragraph (a), that locates its business operation in a non-  
28 metropolitan county and will hire at least five new employees within two  
29 years from the date the qualified company enters into an agreement with  
30 the secretary pursuant to K.S.A. 2011 Supp. 74-50,213, and amendments  
31 thereto, shall: (1) Be eligible to retain 95% of the qualified company's  
32 Kansas payroll withholding taxes for such new employees being paid the  
33 county median wage or higher for a period of up to:

34 (A) Five years if the median wage paid to the new employees is equal  
35 to at least 100% of the county median wage;

36 (B) six years if the median wage paid to the new employees is equal  
37 to at least 110% of the county median wage;

38 (C) seven years if the median wage paid to the new employees is  
39 equal to at least 120% of the county median wage; or

40 (2) be eligible to retain 95% of the qualified company's Kansas  
41 payroll withholding taxes for such new employees being paid the county  
42 median wage or higher for a period of up to five years if the median wage  
43 paid to the new employees is equal to at least 100% of the NAICS code

1 industry average wage.

2 (c) Any qualified company, approved by the secretary for benefits  
3 pursuant to paragraph (a), that engages in a high-impact project whereby  
4 the qualified company will hire at least 100 new employees within two  
5 years from the date the qualified company enters into an agreement with  
6 the secretary pursuant to K.S.A. 2011 Supp. 74-50,213, and amendments  
7 thereto, shall be eligible to retain 95% of the qualified company's Kansas  
8 payroll withholding taxes for such new employees being paid the county  
9 median wage or higher for a period of up to:

10 (1) Seven years if the median wage paid to the new employees is  
11 equal to at least 100% of the county median wage;

12 (2) eight years if the median wage paid to the new employees is equal  
13 to at least 110% of the county median wage;

14 (3) nine years if the median wage paid to the new employees is equal  
15 to at least 120% of the county median wage; or

16 (4) ten years if the median wage paid to the new employees is equal  
17 to at least 140% of the county median wage.

18 (d) In the event that a qualified company contracts with a third party  
19 as described in subsection (a), the third party shall remit payments equal to  
20 the amount of Kansas payroll withholding taxes the qualified company is  
21 eligible to retain under this section to the qualified company, and report  
22 such amount to the department of revenue as required pursuant to  
23 subsection (a) of K.S.A. 2011 Supp. 74-50,214, and amendments thereto.

24 *(e) (1) On and after January 1, 2013, a qualified company shall*  
25 *employ a sufficient number of Kansas workers such that at least 70% of*  
26 *the employees assigned by such qualified firm to perform work in the state*  
27 *of Kansas shall be Kansas workers. An employee shall be considered*  
28 *assigned to perform work in the state of Kansas if the employee performs*  
29 *any work that is performed in Kansas regardless of the proportion of such*  
30 *work to the employee's regular employment duties.*

31 *(2) For the purposes of this subsection, the term "Kansas worker"*  
32 *shall have the same meaning ascribed thereto in section 1, and*  
33 *amendments thereto.*

34 ~~(e)~~ (f) Commencing January 1, 2013, and ending December 31, 2014,  
35 any company, which meets the criteria provided pursuant to the provisions  
36 of K.S.A. 2011 Supp. 74-50,211, and amendments thereto, that retains the  
37 employees of an existing business unit located in Kansas and enters into an  
38 agreement with the secretary pursuant to K.S.A. 2011 Supp. 74-50,213,  
39 and amendments thereto, shall be eligible to retain 95% of the qualified  
40 company's Kansas payroll withholding taxes for such employees for a  
41 period of up to five years.

42 ~~(f)~~ (g) (1) Commencing January 1, 2013, and ending December 31,  
43 2014, pursuant to the provisions of subsection ~~(e)~~ (f), the secretary of

1 commerce, in the secretary's sole determination, may provide the benefits  
2 of the promoting employment across Kansas act for situations where it is  
3 deemed necessary by the secretary that the state of Kansas provide  
4 incentives for a company or its operations currently located in Kansas to  
5 remain in Kansas so as to keep its retained jobs. The secretary shall  
6 establish and verify that a prospective company has competitive  
7 alternatives that it is seriously considering and that a company's relocation  
8 may be imminent. Furthermore, the secretary shall assess:

9 (A) Whether the retention of the company or its operations is  
10 important to the economic vitality of the state;

11 (B) the area where such company or operations is located; or

12 (C) whether the retention of the company or its operations is  
13 important to a particular industry in the state due to any number of factors  
14 including, but not limited to, the quantity, quality or wages of the retained  
15 jobs involved.

16 (2) Effective January 1, 2013, and ending December 31, 2014, the  
17 secretary may use the promoting employment across Kansas act in  
18 conjunction with other economic development programs to develop a  
19 retention package.

20 (g) The provisions of this act as in effect prior to the effective date of  
21 this act shall apply to employers who have entered into agreements with  
22 the secretary prior to July 1, 2011. The provisions of this act shall apply to  
23 employers who enter into agreements with the secretary on and after July  
24 1, 2011.

25 Sec. 5. K.S.A. 2011 Supp. 79-32,154 is hereby amended to read as  
26 follows: 79-32,154. As used in this act, the following words and phrases  
27 shall have the meanings respectively ascribed to them herein:

28 (a) "Facility" shall mean any factory, mill, plant, refinery, warehouse,  
29 feedlot, building or complex of buildings located within the state,  
30 including the land on which such facility is located and all machinery,  
31 equipment and other real and tangible personal property located at or  
32 within such facility used in connection with the operation of such facility.  
33 The word "building" shall include only structures within which individuals  
34 are customarily employed or which are customarily used to house  
35 machinery, equipment or other property.

36 (b) "Qualified business facility" shall mean a facility which satisfies  
37 the requirements of paragraphs (1) ~~and~~, (2) *and* (3) of this subsection.

38 (1) Such facility is employed by the taxpayer in the operation of a  
39 revenue producing enterprise, as defined in subsection (c). Such facility  
40 shall not be considered a qualified business facility in the hands of the  
41 taxpayer if the taxpayer's only activity with respect to such facility is to  
42 lease it to another person or persons. If the taxpayer employs only a  
43 portion of such facility in the operation of a revenue producing enterprise,

1 and leases another portion of such facility to another person or persons or  
2 does not otherwise use such other portions in the operation of a revenue  
3 producing enterprise, the portion employed by the taxpayer in the  
4 operation of a revenue producing enterprise shall be considered a qualified  
5 business facility, if the requirements of paragraph (2) of this subsection are  
6 satisfied.

7 (2) If such facility was acquired by the taxpayer from another person  
8 or persons, such facility was not employed, immediately prior to the  
9 transfer of title to such facility to the taxpayer, or to the commencement of  
10 the term of the lease of such facility to the taxpayer, by any other person or  
11 persons in the operation of a revenue producing enterprise and the  
12 taxpayer continues the operation of the same or substantially identical  
13 revenue producing enterprise, as defined in subsection (i), at such facility.

14 (3) (A) *On and after January 1, 2013, a qualified business facility*  
15 *shall employ a sufficient number of Kansas workers such that at least 70%*  
16 *of the employees assigned by such facility to perform work in the state of*  
17 *Kansas shall be Kansas workers. An employee shall be considered*  
18 *assigned to perform work in the state of Kansas if the employee performs*  
19 *any work that is performed in Kansas regardless of the proportion of such*  
20 *work to the employee's regular employment duties.*

21 (B) *For the purposes of this subsection, the term "Kansas worker"*  
22 *shall have the same meaning ascribed thereto in section 1, and*  
23 *amendments thereto.*

24 (c) "Revenue producing enterprise" shall mean:

25 (1) The assembly, fabrication, manufacture or processing of any  
26 agricultural, mineral or manufactured product;

27 (2) the storage, warehousing, distribution or sale of any products of  
28 agriculture, aquaculture, mining or manufacturing;

29 (3) the feeding of livestock at a feedlot;

30 (4) the operation of laboratories or other facilities for scientific,  
31 agricultural, aquacultural, animal husbandry or industrial research,  
32 development or testing;

33 (5) the performance of services of any type;

34 (6) the feeding of aquatic plants and animals at an aquaculture  
35 operation;

36 (7) the administrative management of any of the foregoing activities;  
37 or

38 (8) any combination of any of the foregoing activities.

39 "Revenue producing enterprise" shall not mean a swine production  
40 facility as defined in K.S.A. 17-5903, and amendments thereto.

41 (d) "Qualified business facility employee" shall mean a person  
42 employed by the taxpayer in the operation of a qualified business facility  
43 during the taxable year for which the credit allowed by K.S.A. 79-32,153,

1 and amendments thereto, is claimed:

2 (1) A person shall be deemed to be so engaged if such person  
3 performs duties in connection with the operation of the qualified business  
4 facility on: (A) A regular, full-time basis; (B) a part-time basis, provided  
5 such person is customarily performing such duties at least 20 hours per  
6 week throughout the taxable year; or (C) a seasonal basis, provided such  
7 person performs such duties for substantially all of the season customary  
8 for the position in which such person is employed. The number of  
9 qualified business facility employees during any taxable year shall be  
10 determined by dividing by 12 the sum of the number of qualified business  
11 facility employees on the last business day of each month of such taxable  
12 year. If the qualified business facility is in operation for less than the  
13 entire taxable year, the number of qualified business facility employees  
14 shall be determined by dividing the sum of the number of qualified  
15 business facility employees on the last business day of each full calendar  
16 month during the portion of such taxable year during which the qualified  
17 business facility was in operation by the number of full calendar months  
18 during such period. Notwithstanding the provisions of this subsection, for  
19 the purpose of computing the credit allowed by K.S.A. 79-32,153, and  
20 amendments thereto, in the case of an investment in a qualified business  
21 facility, which facility existed and was operated by the taxpayer or related  
22 taxpayer prior to such investment, the number of qualified business facility  
23 employees employed in the operation of such facility shall be reduced by  
24 the average number, computed as provided in this subsection, of  
25 individuals employed in the operation of the facility during the taxable  
26 year preceding the taxable year in which the qualified business facility  
27 investment was made at the facility.

28 (2) For taxable years commencing after December 31, 1997, in the  
29 case of a taxpayer claiming a credit against the premium tax and privilege  
30 fees imposed pursuant to K.S.A. 40-252, and amendments thereto or the  
31 privilege tax as measured by net income of financial institutions imposed  
32 pursuant to chapter 79 article 11 of the Kansas Statutes Annotated,  
33 "qualified business employee" shall not mean any person who is employed  
34 in the operation of a qualified business facility in the state due to the  
35 merger, acquisition or other reconfiguration of the taxpayer unless such  
36 employee's position represents a net gain of total positions created by the  
37 taxpayer and the employee's position was not in existence at the time of  
38 the merger acquisition or other reconfiguration of the taxpayer.

39 (e) "Qualified business facility investment" shall mean the value of  
40 the real and tangible personal property, except inventory or property held  
41 for sale to customers in the ordinary course of the taxpayer's business,  
42 which constitutes the qualified business facility, or which is used by the  
43 taxpayer in the operation of the qualified business facility, during the

1 taxable year for which the credit allowed by K.S.A. 79-32,153, and  
2 amendments thereto, is claimed. The value of such property during such  
3 taxable year shall be: (1) Its original cost if owned by the taxpayer; or (2)  
4 eight times the net annual rental rate, if leased by the taxpayer. The net  
5 annual rental rate shall be the annual rental rate paid by the taxpayer less  
6 any annual rental rate received by the taxpayer from subrentals. The  
7 qualified business facility investment shall be determined by dividing by  
8 12 the sum of the total value of such property on the last business day of  
9 each calendar month of the taxable year. If the qualified business facility  
10 is in operation for less than an entire taxable year, the qualified business  
11 facility investment shall be determined by dividing the sum of the total  
12 value of such property on the last business day of each full calendar month  
13 during the portion of such taxable year during which the qualified business  
14 facility was in operation by the number of full calendar months during  
15 such period. Notwithstanding the provisions of this subsection, for the  
16 purpose of computing the credit allowed by K.S.A. 79-32,153, and  
17 amendments thereto, in the case of an investment in a qualified business  
18 facility, which facility existed and was operated by the taxpayer or related  
19 taxpayer prior to such investment the amount of the taxpayer's qualified  
20 business facility investment in such facility shall be reduced by the  
21 average amount, computed as provided in this subsection, of the  
22 investment of the taxpayer or a related taxpayer in the facility for the  
23 taxable year preceding the taxable year in which the qualified business  
24 facility investment was made at the facility.

25 (f) "Commencement of commercial operations" shall be deemed to  
26 occur during the first taxable year for which the qualified business facility  
27 is first available for use by the taxpayer, or first capable of being used by  
28 the taxpayer, in the revenue producing enterprise in which the taxpayer  
29 intends to use the qualified business facility.

30 (g) "Qualified business facility income" shall mean the Kansas  
31 taxable income derived by the taxpayer from the operation of the qualified  
32 business facility. If a taxpayer has income derived from the operation of a  
33 qualified business facility as well as from other activities conducted within  
34 this state, the Kansas taxable income derived by the taxpayer from the  
35 operation of the qualified business facility shall be determined by  
36 multiplying the taxpayer's Kansas taxable income by a fraction, the  
37 numerator of which is the property factor, as defined in paragraph (1), plus  
38 the payroll factor, as defined in paragraph (2), and the denominator of  
39 which is two. In the case of financial institutions, the property and payroll  
40 factors shall be computed utilizing the specific provisions of the  
41 apportionment method applicable to financial institutions, if enacted, and  
42 the qualified business facility income shall be based upon net income.

43 (1) The property factor is a fraction, the numerator of which is the

1 average value of the taxpayer's real and tangible personal property owned  
2 or rented and used in connection with the operation of the qualified  
3 business facility during the tax period, and the denominator of which is the  
4 average value of all the taxpayer's real and tangible personal property  
5 owned or rented and used in this state during the tax period. The average  
6 value of all such property shall be determined as provided in K.S.A. 79-  
7 3281 and 79-3282, and amendments thereto.

8 (2) The payroll factor is a fraction, the numerator of which is the total  
9 amount paid during the tax period by the taxpayer for compensation to  
10 persons qualifying as qualified business facility employees, as determined  
11 under subsection (d), at the qualified business facility, and the denominator  
12 of which is the total amount paid in this state during the tax period by the  
13 taxpayer for compensation. The compensation paid in this state shall be  
14 determined as provided in K.S.A. 79-3283, and amendments thereto.

15 The formula set forth in this subsection (g) shall not be used for any  
16 purpose other than determining the qualified business facility income  
17 attributable to a qualified business facility.

18 (h) "Related taxpayer" shall mean (1) a corporation, partnership, trust  
19 or association controlled by the taxpayer; (2) an individual, corporation,  
20 partnership, trust or association in control of the taxpayer; or (3) a  
21 corporation, partnership, trust or association controlled by an individual,  
22 corporation, partnership, trust or association in control of the taxpayer.  
23 For the purposes of this act, "control of a corporation" shall mean  
24 ownership, directly or indirectly, of stock possessing at least 80% of the  
25 total combined voting power of all classes of stock entitled to vote and at  
26 least 80% of all other classes of stock of the corporation; "control of a  
27 partnership or association" shall mean ownership of at least 80% of the  
28 capital or profits interest in such partnership or association; and "control of  
29 a trust" shall mean ownership, directly or indirectly, of at least 80% of the  
30 beneficial interest in the principal or income of such trust.

31 (i) "Same or substantially identical revenue producing enterprise"  
32 shall mean a revenue producing enterprise in which the products produced  
33 or sold, services performed or activities conducted are the same in  
34 character and use, are produced, sold, performed or conducted in the same  
35 manner and to or for the same type of customers as the products, services  
36 or activities produced, sold, performed or conducted in another revenue  
37 producing enterprise.

38 Sec. 6. K.S.A. 2011 Supp. 79-32,243 is hereby amended to read as  
39 follows: 79-32,243. (a) For tax years commencing after December 31,  
40 2005, any taxpayer claiming credits pursuant to K.S.A. 74-50,132, 79-  
41 32,153 or 79-32,160a, and amendments thereto, as a condition for  
42 claiming and qualifying for such credits, shall provide the following  
43 information as part of the tax return, in which such credits are claimed,

1 which shall be used by the department of revenue in evaluating the  
2 effectiveness of such tax credit programs, pursuant to K.S.A. 2011 Supp.  
3 74-99b35, and amendments thereto:

4 (1) Actual jobs created as a direct result of the expenditures on which  
5 such credit claim is based, if the taxpayer has previously submitted an  
6 estimate of such number of actual jobs created to the department of  
7 commerce as a part of applying for certification for such program  
8 participation;

9 (2) additional payroll generated as a direct result of the expenditures  
10 on which such credit claim is based, if the taxpayer has previously  
11 submitted an estimate of such amount of additional payroll generated to  
12 the department of commerce as a part of applying for certification for such  
13 program participation;

14 (3) actual jobs retained as a direct result of the expenditures on which  
15 such credit claim is based, if the taxpayer has previously submitted an  
16 estimate of actual jobs retained to the department of commerce as a part of  
17 applying for certification for such program participation;

18 (4) additional revenue generated as a direct result of the expenditures  
19 on which such credit claim is based, if the taxpayer has previously  
20 submitted an estimate of such amount of additional revenue generated to  
21 the department of commerce as a part of applying for certification for such  
22 program participation;

23 (5) additional sales generated as a direct result of the expenditures on  
24 which such credit claim is based, if the taxpayer has previously submitted  
25 an estimate of additional sales generated to the department of commerce as  
26 a part of applying for certification for program participation;

27 (6) total employment and payroll at the end of the tax year in which  
28 the credits are claimed;

29 (7) *any personnel information as required by the secretary of revenue*  
30 *for the purpose of verifying the number of Kansas workers, as that term is*  
31 *defined in section 1, and amendments thereto, employed by the qualified*  
32 *business facility; and*

33 ~~(7) (8)~~ such further information as shall be required by the secretary  
34 of revenue.

35 (b) Such credits specified in subsection (a) shall not be denied solely  
36 on the basis of the information provided by the taxpayer pursuant to  
37 subsections (a)(1) through ~~(a)(7)~~ (a)(8).

38 Sec. 7. K.S.A. 2011 Supp. 12-17,166, 74-50,131, 74-50,212, 79-  
39 32,154 and 79-32,243 are hereby repealed.

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

42