

SENATE BILL No. 204

By Select Committee on Federal Tax Code Implementation

2-19

1 AN ACT concerning economic development; relating to evaluations of
2 economic development incentives; creating the legislative post audit
3 economic development incentive review subcommittee.
4

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

6 Section 1. As used in sections 1 through 6, and amendments thereto:

7 (a) "Economic development incentives" means state programs,
8 statutory provisions, or tax expenditures, including tax credits, tax
9 exemptions, tax deductions, grants, loans or workforce programs, that are
10 intended to encourage economic development in Kansas or to incentivize
11 businesses to locate, expand, invest or remain in Kansas, to hire or retain
12 employees in Kansas or otherwise directly facilitate economic
13 development in Kansas.

14 (b) "Evaluation" or "evaluation report" means an evaluation of an
15 economic development incentive conducted under the direction of the
16 subcommittee with the approval of the legislative post audit committee in
17 accordance with the provisions of sections 1 through 6, and amendments
18 thereto, and under the legislative post audit act and shall be included
19 within the meaning of "audit" or "audit work" as used in and for purposes
20 of the provisions of the legislative post audit act.

21 (c) "Firm" means any individual, firm, partnership, corporation,
22 association or other legal entity qualified to perform evaluations of
23 economic development incentives as determined by the post auditor. A
24 "firm" shall have experience and expertise in performing evaluations of
25 economic development incentive programs but shall not be required to be
26 permitted by law to engage in practice as a certified public accountant.

27 (d) "Subcommittee" means the economic development incentive
28 review subcommittee of the legislative post audit committee established in
29 section 2, and amendments thereto.

30 Sec. 2. (a) There is hereby established the economic development
31 incentive review subcommittee of the legislative post audit committee. The
32 subcommittee shall be composed of six members of the legislative post
33 audit committee as follows:

34 (1) The chairperson of the legislative post audit committee, or the
35 chairperson's designee;

36 (2) the vice-chairperson of the legislative post audit committee, or the

1 vice-chairperson's designee;

2 (3) one member selected by the president of the senate;

3 (4) one member selected by the speaker of the house of
4 representatives;

5 (5) one member selected by the minority leader of the senate; and

6 (6) one member selected by the minority leader of the house of
7 representatives.

8 (b) Preference may be given in the selection of members to legislators
9 who serve or have served on the senate committee on assessment and
10 taxation, the senate committee on commerce, the house committee on
11 taxation or the house committee on commerce, labor and economic
12 development, or their successor committees.

13 (c) The chairperson of the legislative post audit committee, or the
14 chairperson's designee, shall serve as the chairperson of the subcommittee.
15 The vice-chairperson of the legislative post audit committee, or the vice-
16 chairperson's designee, shall serve as vice-chairperson of the
17 subcommittee.

18 (d) The purpose of the subcommittee shall be to direct evaluations of
19 economic development incentive programs and perform other duties as
20 provided by sections 1 through 6, and amendments thereto, under the
21 legislative post audit act and with the approval of the legislative post audit
22 committee. Subject to the approval of the legislative post audit committee,
23 the subcommittee is hereby authorized to direct the post auditor to perform
24 evaluations of economic development incentive programs, or to direct a
25 firm or firms to perform such evaluations, as provided in sections 1
26 through 6, and amendments thereto. In conducting such an evaluation, the
27 post auditor and the division of post audit, or any firm or firms engaged to
28 conduct such evaluation, shall have access to all books, accounts, records,
29 files, documents and correspondence, confidential or otherwise, to the
30 same extent permitted under K.S.A. 46-1106(e), and amendments thereto,
31 and any firm or firms engaged to perform such evaluation shall be subject
32 to the same duty of confidentiality as the post auditor and the officers and
33 employees of the division of post audit under the legislative post audit act.

34 (e) Subject to the approval of the legislative post audit committee, the
35 post auditor and the division of post audit shall provide the subcommittee
36 assistance with the subcommittee's other duties as provided in section 3,
37 and amendments thereto, as directed by the subcommittee.

38 (f) The subcommittee shall have authority to introduce legislation in
39 connection with its duties.

40 (g) The subcommittee may meet at any time and at any location in the
41 state on the call of the chairperson or a request to the chairperson by a
42 majority of the subcommittee. A quorum of the subcommittee shall be four
43 members. All actions of the subcommittee shall be taken by a majority of

1 all the members. The vice-chairperson shall exercise all of the powers of
2 the chairperson in the absence of the chairperson. Subcommittee members
3 shall receive compensation, travel expenses and subsistence allowances as
4 provided by K.S.A. 46-1104, and amendments thereto.

5 Sec. 3. (a) On or before July 1, 2020, the subcommittee shall develop
6 policy guidelines, eligibility requirements and criteria for enacting sales
7 tax exemptions under K.S.A. 79-3606, and amendments thereto, requested
8 by businesses or nonprofit, religious or charitable organizations. The
9 subcommittee shall submit its recommendations to the house committees
10 on taxation and commerce, labor and economic development and the
11 senate committees on assessment and taxation and commerce, or their
12 successor committees. The subcommittee may introduce legislation to
13 implement its recommendations.

14 (b) On or before January 1, 2021, the subcommittee shall develop an
15 inventory of all Kansas economic development incentives. In determining
16 whether a program is an economic development incentive, the
17 subcommittee may consider legislative intent, whether the program is
18 promoted as an incentive by any state agency and other factors deemed
19 relevant by the subcommittee. The subcommittee shall annually update
20 this inventory.

21 (c) The post auditor shall complete an initial one-time study, to be
22 completed by July 1, 2021, to determine the purpose of each incentive, the
23 data available, and what additional information may be needed to facilitate
24 future high-quality evaluations. The study results shall be provided to the
25 subcommittee at the first meeting of the subcommittee following the
26 completion of the study.

27 (d) Upon completion of the inventory as provided in subsection (b),
28 the subcommittee, in consultation with the post auditor and as approved by
29 the legislative post audit committee, shall develop a schedule ensuring that
30 economic development incentives are evaluated at least once every five
31 calendar years, subject to appropriations therefor. The schedule shall
32 include all economic development incentives, except those exempted by
33 the subcommittee from evaluation. The schedule may be adjusted and
34 updated as necessary by the subcommittee, subject to the approval of the
35 legislative post audit committee. Evaluations shall commence in calendar
36 year 2021 pursuant to the schedule, except that in 2021, such evaluations
37 shall be limited to no more than two.

38 Sec. 4. (a) The subcommittee shall determine for each evaluation
39 whether to use the services of the post auditor, the services of a firm or
40 firms or the combined services of the post auditor and a firm or firms,
41 subject to approval of the legislative post audit committee and
42 appropriations therefor. The subcommittee shall select the candidate firm
43 or firms and the firm or firms finally selected to perform the evaluation,

1 and shall direct and monitor the firm or firms in the performance of the
2 evaluation with the assistance of the post auditor and the contract audit
3 committee, but contracts shall otherwise be procured, entered into and
4 administered by the contract audit committee and the post auditor as
5 provided in K.S.A. 46-1123 and 46-1126, and amendments thereto, as
6 applicable.

7 (b) The subcommittee shall accept the written economic development
8 incentive evaluation report of the post auditor. If a firm or firms have been
9 selected to perform an evaluation, the firm or firms shall submit a written
10 evaluation report at the conclusion of the evaluation to the post auditor,
11 who shall distribute the complete evaluation report to members of the
12 subcommittee. The evaluation report shall be provided to the agency or
13 agencies responsible for administration of the economic development
14 incentive under evaluation, and the agency or agencies shall be given
15 opportunity to respond or comment. The subcommittee shall hold a public
16 hearing on each evaluation report completed.

17 (c) The subcommittee shall approve and submit the written economic
18 development incentive evaluation report to the legislature for each
19 evaluation following the completion of the public hearing. The
20 subcommittee may include recommendations and comments on the
21 evaluations or the incentives under review in the evaluation report. The
22 subcommittee may require the post auditor or a firm or firms to conduct
23 further investigation or inquiry based upon the initial evaluation report and
24 to issue a supplemental evaluation report to the subcommittee, and if so,
25 the subcommittee may defer submitting the initial evaluation report to the
26 legislature. Upon receipt of any supplemental evaluation report from the
27 post auditor or a firm or firms performing the supplemental evaluation, the
28 subcommittee shall accept the supplemental evaluation report, conduct a
29 public hearing on the supplemental evaluation report and approve and
30 submit the initial evaluation report and the supplemental evaluation report,
31 including any recommendations or comments by the subcommittee, to the
32 legislature.

33 Sec. 5. As directed by the subcommittee, an evaluation may include:

34 (a) A description of the history of the incentive and its goals;

35 (b) a literature review of the effectiveness of this type of incentive,
36 including an inventory of similar incentives in other states;

37 (c) an estimate of the economic and fiscal impact of the incentive.

38 This estimate may take into account the following considerations in
39 addition to other relevant factors:

40 (1) The extent to which the incentive changes business behavior;

41 (2) the results of the incentive for the economy of Kansas as a whole,
42 including both positive direct and indirect impacts and any negative effects
43 on other Kansas businesses; and

1 (3) a comparison with the results of other incentives or other
2 economic development strategies with similar goals;

3 (d) an assessment of whether adequate protections are in place to
4 ensure that the fiscal impact of the incentive does not substantially
5 increase beyond the state's means or expectations in future years;

6 (e) an assessment of whether the incentive is being effectively
7 administered;

8 (f) an assessment of whether the incentive is achieving its goals;

9 (g) recommendations for how the state can more effectively achieve
10 the incentive's goals;

11 (h) recommendations for any changes to state policy, rules and
12 regulations or statutes that would allow the incentive to be more easily or
13 conclusively evaluated in the future. These recommendations may include
14 changes to collection, reporting and sharing of data, and revisions or
15 clarifications to the goals of the incentive;

16 (i) an analysis of economic impact data utilizing direct, primary
17 source or auditable data, to the extent such data is reasonably available,
18 and excluding any tertiary or indirect effects of the economic development
19 program;

20 (j) an analysis of multiplier effects and a critique of the multiplier
21 effect determination methodologies utilized in the evaluation report,
22 including any determinations made using standard industry software
23 models, and any respective potential effects of such methods on outcomes;
24 and

25 (k) any other information the post auditor, the firm or firms or the
26 subcommittee deems necessary to assess the effectiveness of the incentive
27 and whether it is achieving the goals of the incentive.

28 Sec. 6. Sections 1 through 6, and amendments thereto, shall be a part
29 of and supplemental to the legislative post audit act.

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