

SENATE BILL No. 231

By Committee on Assessment and Taxation

3-15

1 AN ACT concerning economic development; relating to the promoting
2 employment across Kansas act, three-year moratorium; amending
3 K.S.A. 2016 Supp. 74-50,212 and 74-50,213 and repealing the existing
4 sections.

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

7 Section 1. K.S.A. 2016 Supp. 74-50,212 is hereby amended to read as
8 follows: 74-50,212. (a) In order to qualify for benefits under this act a
9 qualified company shall:

10 (1) Relocate to Kansas an existing business facility, office,
11 department or other operation doing business outside the state of Kansas
12 and locate the jobs directly related to such relocated business facility,
13 office, department or other operation in Kansas;

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

17 (3) expand an existing business facility, office, department or other
18 operation located in the state of Kansas and locate the jobs directly related
19 to such business facility, office, department or other operation in Kansas,
20 except that no payroll withholding taxes shall be retained prior to January
21 1, 2012.

22 *The secretary shall not approve any application for benefits under this*
23 *act on and after July 1, 2018, and before July 1, 2021.*

24 A qualified company may utilize or contract with a third-party
25 employer to perform services whereby the third-party employer serves as
26 the legal employer of the new employees providing services to the
27 qualified company and such services are performed in Kansas and the
28 third-party employer and the new employees are subject to the Kansas
29 withholding and declaration of estimated tax act.

30 (b) Any qualified company, approved by the secretary for benefits
31 pursuant to ~~paragraph~~ subsection (a), that locates *or expands* its business
32 operation in a metropolitan county and will hire at least 10 new employees
33 within two years from the date the qualified company enters into an
34 agreement with the secretary pursuant to K.S.A. 2016 Supp. 74-50,213,
35 and amendments thereto, or any qualified company, approved by the
36 secretary for benefits pursuant to ~~paragraph~~ subsection (a), that locates *or*

1 *expands* its business operation in a non-metropolitan county and will hire
2 at least five new employees within two years from the date the qualified
3 company enters into an agreement with the secretary pursuant to K.S.A.
4 2016 Supp. 74-50,213, and amendments thereto, shall: (1) Be eligible to
5 retain 95% of the qualified company's Kansas payroll withholding taxes
6 for such new employees being paid the county median wage or higher for
7 a period of up to:

8 (A) Five years if the median wage or average wage paid to the new
9 employees is equal to at least 100% of the county median wage;

10 (B) six years if the median wage or average wage paid to the new
11 employees is equal to at least 110% of the county median wage;

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

14 (2) be eligible to retain 95% of the qualified company's Kansas
15 payroll withholding taxes for such new employees being paid the county
16 median wage or higher for a period of up to five years if the median wage
17 or average wage paid to the new employees is equal to at least 100% of the
18 NAICS code industry average wage.

19 *The secretary shall not approve any application for benefits under this*
20 *subsection on and after July 1, 2018, and before July 1, 2021.*

21 (c) Any qualified company, approved by the secretary for benefits
22 pursuant to ~~paragraph~~ subsection (a), that engages in a high-impact project
23 whereby the qualified company will hire at least 100 new employees
24 within two years from the date the qualified company enters into an
25 agreement with the secretary pursuant to K.S.A. 2016 Supp. 74-50,213,
26 and amendments thereto, shall be eligible to retain 95% of the qualified
27 company's Kansas payroll withholding taxes for such new employees
28 being paid the county median wage or higher for a period of up to:

29 (1) Seven years if the median wage or average wage paid to the new
30 employees is equal to at least 100% of the county median wage;

31 (2) eight years if the median wage or average wage paid to the new
32 employees is equal to at least 110% of the county median wage;

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

35 (4) ten years if the median wage or average wage paid to the new
36 employees is equal to at least 140% of the county median wage.

37 *The secretary shall not approve any application for benefits under this*
38 *subsection on and after July 1, 2018, and before July 1, 2021.*

39 (d) In the event that a qualified company contracts with a third party
40 as described in subsection (a), the third party shall remit payments equal to
41 the amount of Kansas payroll withholding taxes the qualified company is
42 eligible to retain under this section to the qualified company, and report
43 such amount to the department of revenue as required pursuant to

1 subsection (a) of K.S.A. 2016 Supp. 74-50,214(a), and amendments
2 thereto.

3 (e) Commencing January 1, 2013, and ending June 30, 2018, any
4 company, which meets the criteria provided pursuant to the provisions of
5 K.S.A. 2016 Supp. 74-50,211, and amendments thereto, that retains the
6 employees of an existing business unit located in Kansas and enters into an
7 agreement with the secretary pursuant to K.S.A. 2016 Supp. 74-50,213,
8 and amendments thereto, shall be eligible to retain 95% of the qualified
9 company's Kansas payroll withholding taxes for such employees for a
10 period of up to five years.

11 (f) (1) Commencing January 1, 2013, and ending June 30, 2018,
12 pursuant to the provisions of subsection (e), the secretary of commerce, in
13 the secretary's sole determination, may provide the benefits of the
14 promoting employment across Kansas act for situations where it is deemed
15 necessary by the secretary that the state of Kansas provide incentives for a
16 company or its operations currently located in Kansas to remain in Kansas
17 so as to keep its retained jobs. The secretary shall establish and verify that
18 a prospective company has competitive alternatives that it is seriously
19 considering and that a company's relocation may be imminent.
20 Furthermore, the secretary shall assess:

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

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

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

28 (2) Effective January 1, 2013, and ending June 30, 2018, the secretary
29 may use the promoting employment across Kansas act in conjunction with
30 other economic development programs to develop a retention package.

31 (g) The provisions of this act as in effect prior to ~~the effective date of~~
32 ~~this act~~ *July 1, 2011*, shall apply to employers who have entered into
33 agreements with the secretary prior to July 1, 2011. The provisions of this
34 act shall apply to employers who enter into agreements with the secretary
35 on and after July 1, 2011.

36 (h) In the event a qualified company entered into an agreement for
37 benefits under this section prior to January 1, 2013, such qualified
38 company may request the secretary to extend the benefit term of such
39 agreement by a period of up to two additional years. If in the secretary's
40 discretion it is necessary to provide the qualified company with all benefits
41 intended under such agreement, the extension may be granted.

42 Sec. 2. K.S.A. 2016 Supp. 74-50,213 is hereby amended to read as
43 follows: 74-50,213. (a) Any qualified company meeting the requirements

1 of K.S.A. 2016 Supp. 74-50,212, and amendments thereto, may apply to
2 the secretary for benefits under this act. The application shall be submitted
3 on a form and in a manner prescribed by the secretary, and shall include:
4 (1) Evidence that the applicant is a qualified company; and (2) evidence
5 that the applicant meets the requirements of K.S.A. 2016 Supp. 74-50,212,
6 and amendments thereto.

7 (b) The secretary may either approve or disapprove the application.
8 Any qualified company whose application is approved shall be eligible to
9 receive benefits under this act as of the date such qualified company enters
10 into an agreement with the secretary in accordance with this section. *The*
11 *secretary shall not approve any application for benefits under this act on*
12 *and after July 1, 2018, and before July 1, 2021.*

13 (c) Upon approval of an application for benefits under this act, the
14 secretary may enter into an agreement with the qualified company for
15 benefits under this act. If necessary, the secretary may also enter into an
16 agreement with any third party described in ~~subsection (a)~~ of K.S.A. 2016
17 Supp. 74-50,212(a), and amendments thereto, or such third party may be a
18 party to the agreement between the qualified company and the secretary.
19 The agreement shall commit the secretary to certify to the secretary of
20 revenue: (1) That the qualified company is eligible to receive benefits
21 under this act; (2) the number of new employees hired by the qualified
22 company; and (3) the amount of gross wages being paid to each new
23 employee.

24 *The secretary shall not enter into any agreement for benefits under this*
25 *act on and after July 1, 2018, and before July 1, 2021.*

26 (d) The agreement between the qualified company and the secretary
27 shall be entered into before any benefits may be provided under this act,
28 and shall specify that should the qualified company fail to comply with the
29 terms and conditions set forth in the agreement, or fails to comply with the
30 provisions set forth in this act, the secretary may terminate the agreement,
31 and the qualified company shall not be entitled to any further benefits
32 provided under this act and shall be required to remit to the state an
33 amount equal to the aggregate Kansas payroll withholding taxes retained
34 by the qualified company, or remitted to the qualified company by a third
35 party, pursuant to this act as of the date the agreement is terminated.

36 (e) A qualified company that is already receiving benefits pursuant to
37 this act may apply to the secretary for additional benefits if the qualified
38 company meets the requirements of K.S.A. 2016 Supp. 74-50,212, and
39 amendments thereto. *The secretary shall not grant any additional benefits*
40 *under this subsection on and after July 1, 2018, and before July 1, 2021.*

41 (f) A qualified company seeking benefits shall be allowed to
42 participate in the IMPACT program pursuant to K.S.A. 74-50,102 et seq.,
43 and amendments thereto, but shall not be allowed to participate in any

1 other program in which any portion of such qualified company's Kansas
2 payroll withholding taxes have been pledged to finance indebtedness or
3 transferred to or for the benefit of such company. A qualified company
4 shall not be allowed to claim any credits under K.S.A. 79-32,153, 79-
5 32,160a or 79-32,182b, and amendments thereto, if such credits would
6 otherwise be earned for the hiring of new employees and the qualified
7 company has retained any Kansas payroll withholding taxes from wages of
8 such employees. A qualified company shall not be eligible to receive
9 benefits under K.S.A. 2016 Supp. 74-50,212, and amendments thereto, and
10 under K.S.A. 74-50,102 et seq., and amendments thereto, for the same new
11 employees.

12 (g) (1) Under no circumstances shall the total amount of benefits
13 received by the aggregate of all expanding businesses, as such term is
14 defined in K.S.A. 2016 Supp. 74-50,211, and amendments thereto, under
15 this act exceed \$4,800,000 in the fiscal year commencing on July 1, 2011,
16 \$6,000,000 in the fiscal year commencing on July 1, 2012, \$12,000,000 in
17 the fiscal year commencing on July 1, 2013, \$18,000,000 in the fiscal year
18 commencing on July 1, 2014, \$24,000,000 in the fiscal year commencing
19 on July 1, 2015, \$30,000,000 in the fiscal year commencing on July 1,
20 2016, \$36,000,000 in the fiscal year commencing on July 1, 2017, and
21 \$42,000,000 in any fiscal year commencing on or after July 1, 2018.

22 (2) Under no circumstances shall the total amount of benefits
23 received by the aggregate of businesses under ~~subsections (e) or (f) of~~
24 K.S.A. 2016 Supp. 74-50,212(e) or (f), and amendments thereto, exceed
25 \$1,200,000 in the fiscal year commencing on July 1, 2012, \$2,400,000 in
26 the fiscal year commencing on July 1, 2013, \$1,200,000 in the fiscal year
27 commencing on July 1, 2014, \$1,200,000 in the fiscal year commencing
28 on July 1, 2015, \$1,200,000 in the fiscal year commencing on July 1,
29 2016, and \$1,200,000 in the fiscal year commencing on July 1, 2017.

30 (h) The secretary shall adopt rules and regulations necessary to
31 implement and administer the provisions of this act.

32 Sec. 3. K.S.A. 2016 Supp. 74-50,212 and 74-50,213 are hereby
33 repealed.

34 Sec. 4. This act shall take effect and be in force from and after its
35 publication in the statute book.