

2023 Kansas Statutes

- 74-50,311. Attracting powerful economic expansion act; title; definitions.** (a) This act shall be known and may be cited as the attracting powerful economic expansion act.
- (b) For purposes of the attracting powerful economic expansion act:
- (1) "Act" means the attracting powerful economic expansion act, K.S.A. 2023 Supp. 74-50,311 through 74-50,324, and amendments thereto.
 - (2) "Applicant" means a legal entity seeking to certify as a qualified firm for the economic development benefits pursuant to this act.
 - (3) "Commence investment" means to begin to invest, with action being directly connected to documentation describing the project previously submitted to the department.
 - (4) "Commencement of commercial operations" means the date, as determined by the secretary, that the qualified business facility is first available for use by the qualified firm, or first capable of being used by the qualified firm, in the revenue producing enterprise in which the qualified firm intends to use the qualified business facility.
 - (5) "Commitment to invest" means one or both of the following:
 - (A) The qualified firm relocates assets that it already owns to Kansas from an out-of-state location; or
 - (B) the qualified firm enters into a written agreement that provides either party with legally enforceable remedies if the agreement is breached.
 - (6) "Construction" means construction, reconstruction, enlarging or remodeling for the purpose of constructing a qualified business facility.
 - (7) "Department" means the Kansas department of commerce.
 - (8) "Headquarters" means a qualified business facility that meets the following conditions:
 - (A) The main activity at the qualified business facility is providing direction, management, or administrative support for the operation of multiple company-owned worksites or facilities in which the applicant company has an ownership interest greater than 50%; and
 - (B) the qualified business facility is capable of being geographically located anywhere.
 - (9) "New employee" means a qualified business facility employee who is newly employed by the qualified firm or qualified supplier in the qualified firm or qualified supplier's business operating in Kansas during the taxable year for which benefits are sought. Qualified business facility employees performing functions directly related to a relocating, expanding, or new business facility, office, department or other operation shall be considered "new employees."
 - (10) "On-the-job training" means training situations during which a product or service that can be sold or used in internal operations is generated.
 - (11) "Qualified business facility" means a facility as defined in subparagraph (C) that satisfies the requirements of subparagraphs (A) and (B):
 - (A) Such facility is for use by the qualified firm or qualified supplier in the operation of a revenue producing enterprise, as defined in this section. Such facility shall not be considered a "qualified business facility" in the hands of the qualified firm or qualified supplier if the qualified firm's or qualified supplier's only activity with respect to such facility is to lease it to another person or persons. If the qualified firm or qualified supplier employs only a portion of such facility in the operation of a revenue producing enterprise, and leases another portion of such facility to another person or persons or does not otherwise use such other portions in the operation of a revenue producing enterprise, the portion employed by the qualified firm or qualified supplier in the operation of a revenue producing enterprise shall be considered a "qualified business facility," if the requirements of subparagraph (B) are satisfied.
 - (B) If such facility was acquired or leased by the qualified firm from another person or persons, the facility was not used, either immediately prior to the transfer of title to the qualified firm, or to the commencement of the term of the lease to the qualified firm, by any other person or persons in the operation of a revenue producing enterprise that is the same or substantially the same as the revenue producing

enterprise continued by the qualified firm at the facility.

(C) "Facility" means any factory, mill, plant, refinery, warehouse, building or complex of buildings located within the state, including the land on which such facility is located and all machinery, equipment and other real and tangible personal property located at or within such facility used in connection with the operation of such facility.

"Building" means only structures within which individuals are customarily employed or that are customarily used to house machinery, equipment or other property.

(12) (A) "Qualified business facility employee" means an individual employed by a qualified firm or a qualified supplier at a qualified business facility project site, 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.

(B) "Qualified business facility employee" does not include an employee at a qualified business facility project site who has not been employed for three consecutive months.

(13) "Qualified business facility investment" or "qualified investment" means the value of the real and tangible personal property, except inventory or property held for sale to customers in the ordinary course of the qualified firm's or qualified supplier's business, that constitutes the qualified business facility, or that is used by the qualified firm or qualified supplier in the operation of the qualified business facility, including such property used for administrative or managerial functions, during the taxable years for which the credit allowed by K.S.A. 2023 Supp. 74-50,312 and 74-50,313, and amendments thereto, is claimed. "Qualified business facility investment" does not include any building, land, or other real or tangible personal property that is granted, leased or transferred to the qualified firm without cost to the qualified firm. Real or tangible personal property that is granted, leased or transferred to the qualified firm at a cost of less than fair market value shall be reduced in value, for purposes of calculating the qualified business facility investment, by the difference in cost to the qualified firm and fair market value. The value of such property during such taxable year shall be:

(A) Such property's original cost if owned by the qualified firm or qualified supplier; or

(B) eight times the net annual rental rate, if leased by the qualified firm or qualified supplier. The net annual rental rate shall be the annual rental rate paid by the qualified firm or qualified supplier less any annual rental rate received by the qualified firm or qualified supplier from subrentals. The "qualified business facility investment" shall be determined by dividing by 12 the sum of the total value of such property on the last business day of each calendar month of the taxable year.

Notwithstanding the provisions of this paragraph, for the purpose of computing the credit allowed by K.S.A. 2023 Supp. 74-50,313, and amendments thereto, in the case of a "qualified business facility investment" in a qualified business facility that existed and was operated by the qualified firm or qualified supplier or a related taxpayer prior to the investment, the amount of the qualified firm's or qualified supplier's investment shall be computed as follows: Such investment amount shall be reduced by the average amount, computed as provided in this paragraph, of the investment of the qualified firm or qualified supplier or a related taxpayer in the facility for the taxable year preceding the taxable year in which the "qualified business facility investment" was made in the facility.

(14) (A) "Qualified firm" means a for-profit business establishment, subject to state income, sales or property taxes, that is:

(i) Engaged in one or more of the following industries, as defined by the secretary of commerce:

- (a) Advanced manufacturing;
- (b) aerospace;
- (c) distribution, logistics and transportation;
- (d) food and agriculture; or
- (e) professional and technical services;

(ii) engaged in any industry or revenue-producing activity if seeking benefits with respect to a qualified business facility that is the national corporate headquarters of

the for-profit business establishment.

(B) Notwithstanding clauses (i) and (ii*), "qualified firm" does not include a business establishment engaged in mining, swine production, ranching or gaming.

(15) "Qualified supplier" means any business that is a supplier of components, sub-assemblies, chemicals or other process-related tangible goods, is located in Kansas and that is owned by:

(A) An individual, any partnership, association, limited liability corporation or corporation domiciled in Kansas; or

(B) any business, including any business owned by an individual, any partnership, association, limited liability corporation or corporation, even if the business is a wholly owned subsidiary of a foreign corporation, that operates the qualified supplier in the state of Kansas for the purpose of supplying a qualified firm.

(16) "Revenue producing enterprise" means an enterprise that creates revenue subject to potential tax liability in this state.

(17) "Secretary" means the secretary of commerce.

(18) (A) "Total payroll cost" means the payroll amount defined by the Kansas department of labor as total wages on the quarterly wage report and unemployment tax return. For a qualified business facility, "total payroll cost" during the appropriate measurement period may be combined with any pretax earnings in which an employee has elected to direct to a:

(i) Flexible-spending plan;

(ii) deferred compensation plan; or

(iii) retirement plan that includes earnings the employee would otherwise have received in the form of taxable wages had it not been for the voluntary deferral.

(B) "Total payroll cost" does not include company-paid costs for health insurance, dental insurance and any other employee benefits that are not reported to the Kansas department of labor on the employer's quarterly wage report and unemployment tax return.

(19) "Training and education eligible expense" means the amount actually paid for training and education of the group of employees, or portion thereof, and from which the qualified firm or qualified supplier expects to derive increased productivity or quality.

(A) "Training and education eligible expense" includes instructor salaries, curriculum planning and development, travel, materials and supplies, textbooks, manuals, minor training equipment, certain training facility costs and any other expenditure that is eligible under the Kansas industrial training or the Kansas industrial retraining programs.

(B) "Training and education eligible expense" may include, subject to maximum limits determined by the secretary:

(i) Wages of employees during eligible training;

(ii) employee instructors' salaries; and

(iii) training-related travel expenses, with a maximum meals allowance of \$60 per day and lodging costs of \$150 per night.

(C) "Training and education eligible expense" does not include:

(i) Compensation paid to an employee trainee who is receiving on-the-job training;

(ii) compensation paid to an employee during self-training, except for time in which the employee is involved in activities related to an approved computerized course of study;

(iii) bonus pay received as compensation related to the company's financial performance or the employee's job performance, or both;

(iv) overtime pay, unless the employee is being paid at an overtime rate while participating in eligible training;

(v) operations manuals and reference manuals, except that training-specific manuals may be allowable; and

(vi) training and education costs covered by monies or grants obtained from state, federal or other government-sponsored workforce training programs.

History: L. 2022, ch. 3, § 1; February 10.

* Reference should be to subparagraphs (A)(i) and (A)(ii) instead.