

HOUSE BILL No. 2440

By Committee on Commerce, Labor and Economic Development

1-16

1 AN ACT concerning the emerging industry investment act; pertaining to
2 the treatment of certain bioscience companies; amending K.S.A. 2013
3 Supp. 74-99b33 and 74-99b34 and repealing the existing sections.
4

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

6 Section 1. K.S.A. 2013 Supp. 74-99b33 is hereby amended to read as
7 follows: 74-99b33. As used in the emerging industry investment act, and
8 amendments thereto, the following words and phrases shall have the
9 following meanings unless a different meaning clearly appears from the
10 content:

11 (a) "Authority" means the Kansas bioscience authority as created by
12 K.S.A. 2013 Supp. 74-99b04, and amendments thereto.

13 (b) "Base year taxation" means 95% of the 2003 state withholding
14 taxes of bioscience employees working for bioscience companies and state
15 universities currently located in or operating in the state. The base year
16 taxation may be adjusted in future years to account for the addition of new
17 bioscience companies and the identification of existing bioscience
18 companies inadvertently omitted from prior determinations. When a
19 bioscience company is added, the base year taxation shall be amended by
20 95% of the company's 2003 state withholding taxes, if any.

21 (c) "Bioscience" means the use of compositions, methods and
22 organisms in cellular and molecular research, development and
23 manufacturing processes for such diverse areas as pharmaceuticals,
24 medical therapeutics, medical diagnostics, medical devices, medical
25 instruments, biochemistry, microbiology, veterinary medicine, plant
26 biology, agriculture, industrial, environmental, and homeland security
27 applications of bioscience and future developments in the biosciences.
28 Bioscience includes biotechnology and life sciences.

29 (d) "Bioscience company" or "bioscience companies" means a
30 corporation, limited liability company, S corporation, partnership,
31 registered limited liability partnership, foundation, association, nonprofit
32 entity, sole proprietorship, business trust, person, group or other entity that
33 is engaged in the business of bioscience in the state and has business
34 operations in the state, including, without limitation, research,
35 development, sales, services, distribution or production directed towards
36 developing or providing bioscience products or processes for specific

1 commercial or public purposes but shall not include entities engaged in the
2 distribution or retail sale of pharmaceuticals or other bioscience products.
3 The authority and the secretary of revenue shall jointly determine whether
4 an entity qualifies as a "bioscience company" based on verifiable evidence.
5 One of the factors that shall be considered is whether a company has been
6 identified by the department of labor by one of the following NAICS
7 codes: 325411, 325412, 325413, 325414, 325193, 325199, 325311,
8 325320, 334516, 339111, 339112, 339113, 334510, 334517, 339115,
9 621511, 621512, 541710, 541380, 541940 and 622110. Such company
10 shall be presumed to be a bioscience company unless the authority and the
11 secretary of revenue agree, based on verifiable evidence, that the company
12 is not engaged in the business of bioscience in the state. A company
13 identified by another NAICS code may be determined to be a bioscience
14 company by the authority and the secretary of revenue based on verifiable
15 evidence that the company is engaged in the business of bioscience in the
16 state. *From and after July 1, 2014, the authority and the secretary of*
17 *revenue, based upon verifiable evidence, may determine that a company*
18 *which has previously been determined to be a bioscience company shall*
19 *no longer be considered to be a bioscience company for the purposes of*
20 *the emerging industry investment act.*

21 (e) "Bioscience development and investment fund" means the fund
22 created by K.S.A. 2013 Supp. 74-99b34, and amendments thereto.

23 (f) "Bioscience employee" means any employee, officer or director of
24 a bioscience company who is employed in the 2003 tax year or after
25 December 31, 2003, and who is also a state taxpayer and any employee of
26 state universities who is associated with bioscience research in the 2003
27 tax year or after December 31, 2003, and who is also a state taxpayer.

28 (g) "Bioscience research" means any original investigation for the
29 advancement of scientific or technological knowledge of bioscience and
30 any activity that seeks to utilize, synthesize, or apply existing knowledge,
31 information or resources to the resolution of a specific problem, question
32 or issue of bioscience.

33 (h) "Biotechnology" means those fields focusing on technological
34 developments in such areas as molecular biology, genetic engineering,
35 genomics, proteomics, physiomics, nanotechnology, biodefense,
36 biocomputing and bioinformatics and future developments associated with
37 biotechnology.

38 (i) "Board" means the board of directors of the authority.

39 (j) "Eminent scholar" means world-class, distinguished and
40 established investigators recognized nationally for their research,
41 achievements and ability to garner significant federal funding on an annual
42 basis. Eminent scholars are recognized for their scientific knowledge and
43 entrepreneurial spirit to enhance the innovative research that leads to

1 economic gains. Eminent scholars are either members of or likely
2 candidates for the national academy of sciences or other prominent
3 national academic science organizations.

4 (k) "Life sciences" means, without limitation, the areas of medical
5 sciences, pharmaceutical sciences, biological sciences, zoology, botany,
6 horticulture, ecology, toxicology, organic chemistry, physical chemistry
7 and physiology and any future advances associated with the life sciences.

8 (l) "NAICS" means the north American industry classification
9 system.

10 (m) "Rising star scholar" means up-and-coming distinguished
11 investigators growing in their national reputations in their fields, who are
12 active and demonstrate leadership in their associated professional
13 societies, and who attract significant federal research grant support. Rising
14 star scholars would be likely candidates for the national academy of
15 science or other prominent national academic science organizations in the
16 future.

17 (n) "State" means the state of Kansas.

18 (o) "State universities" includes state educational institutions as
19 defined in K.S.A. 76-711, and amendments thereto, and the municipal
20 university as defined in K.S.A. 74-3201b, and amendments thereto.

21 (p) "Subsequent year taxation" means 95% of all state withholding
22 taxes payable by bioscience companies that commence operating in the
23 state after December 31, 2003, and 95% of withholding associated with
24 new bioscience employees added to bioscience companies and state
25 universities and associated with growth of the existing bioscience
26 employee withholding base after December 31, 2003.

27 (q) "Taxpayer" means a person, corporation, limited liability
28 company, S corporation, partnership, registered limited liability
29 partnership, foundation, association, nonprofit entity, sole proprietorship,
30 business trust, group or other entity that is subject to the Kansas income
31 tax act, K.S.A. 79-3201 et seq., and amendments thereto.

32 (r) "This act" means the emerging industry investment act.

33 Sec. 2. K.S.A. 2013 Supp. 74-99b34 is hereby amended to read as
34 follows: 74-99b34. (a) The bioscience development and investment fund is
35 hereby created. The bioscience development and investment fund shall not
36 be a part of the state treasury and the funds in the bioscience development
37 and investment fund shall belong exclusively to the authority.

38 (b) Distributions from the bioscience development and investment
39 fund shall be for the exclusive benefit of the authority, under the control of
40 the board and used to fulfill the purpose, powers and duties of the
41 authority pursuant to the provisions of K.S.A. 2013 Supp. 74-99b01 et
42 seq., and amendments thereto.

43 (c) The secretary of revenue and the authority shall establish the base

1 year taxation for all bioscience companies and state universities. The
2 secretary of revenue, the authority and the board of regents shall establish
3 the number of bioscience employees associated with state universities and
4 report annually and determine the increase from the taxation base annually.
5 The secretary of revenue and the authority may consider any verifiable
6 evidence, including, but not limited to, the NAICS code assigned or
7 recorded by the department of labor for companies with employees in
8 Kansas, when determining which companies should be classified as
9 bioscience companies.

10 (d) (1) Except as provided in subsection (d)(2), (d)(3), (h) ~~or (i)~~, (i) or
11 (j), for a period of 15 years from the effective date of this act, the state
12 treasurer shall pay annually 95% of withholding above the base, as
13 certified by the secretary of revenue, upon Kansas wages paid by
14 bioscience employees to the bioscience development and investment fund.
15 Such payments shall be reconciled annually. On or before the 10th day of
16 each month, the director of accounts and reports shall transfer from the
17 state general fund to the bioscience development and investment fund
18 interest earnings based on:

19 (A) The average daily balance of moneys in the bioscience
20 development and investment fund for the preceding month; and

21 (B) the net earnings rate of the pooled money investment portfolio for
22 the preceding month.

23 (2) (A) For fiscal year 2013, fiscal year 2014 and fiscal year 2015, the
24 first \$1,000,000 that the secretary of revenue certifies to the state treasurer
25 of the annual 95% of withholding above the base, upon Kansas wages paid
26 by bioscience employees, shall be transferred by the director of accounts
27 and reports from the state general fund to the following: the center of
28 innovation for biomaterials in orthopaedic research – Wichita state
29 university fund.

30 (B) There is hereby established in the state treasury the center of
31 innovation for biomaterials in orthopaedic research – Wichita state
32 university fund which shall be administered by Wichita state university.
33 All moneys credited to the fund shall be used for research and
34 development. All expenditures from the center of innovation for
35 biomaterials in orthopaedic research – Wichita state university fund shall
36 be made in accordance with appropriation acts and upon warrants of the
37 director of accounts and reports issued pursuant to expenditures approved
38 by the president of Wichita state university or by the person or persons
39 designated by the president of Wichita state university.

40 (3) (A) For fiscal year 2013, fiscal year 2014 and fiscal year 2015, the
41 next \$5,000,000 that the secretary of revenue certifies to the state treasurer
42 of the annual 95% of withholding above the base, upon Kansas wages paid
43 by bioscience employees above the first \$1,000,000 certified pursuant to

1 subsection (d)(2)(A), shall be transferred by the director of accounts and
2 reports from the state general fund to the following: The national bio agro-
3 defense facility fund at Kansas state university.

4 (B) There is hereby established in the state treasury the national bio
5 agro-defense facility fund which shall be administered by Kansas state
6 university in accordance with the strategic plan adopted by the governor's
7 national bio agro-defense facility steering committee. All moneys credited
8 to the fund shall be used in accordance with the governor's national bio
9 agro-defense facility steering committee's plan with the approval of the
10 president of Kansas state university. All expenditures from the national bio
11 agro-defense facility fund shall be made in accordance with appropriation
12 acts and upon warrants of the director of accounts and reports issued
13 pursuant to expenditures approved by the steering committee and the
14 president of Kansas state university or by the person or persons designated
15 by the president of Kansas state university.

16 (e) The cumulative amounts of funds paid by the state treasurer to the
17 bioscience development and investment fund shall not exceed
18 \$581,800,000.

19 (f) The division of post audit is hereby authorized to conduct a post
20 audit in accordance with the provisions of the legislative post audit act,
21 K.S.A. 46-1106 et seq., and amendments thereto.

22 (g) At the direction of the authority, the fund may be held in the
23 custody of and invested by the state treasurer, provided that the bioscience
24 development and investment fund shall at all times be accounted for in a
25 separate report from all other funds of the authority and the state.

26 (h) During the fiscal years ending June 30, 2015, and June 30, 2016,
27 the aggregate amount that is directed to be transferred from the state
28 general fund to the bioscience development and investment fund pursuant
29 to subsection (d)(1) plus interest earnings pursuant to subsection (d)(1)
30 shall not exceed \$35,000,000 for each such fiscal year.

31 (i) During the fiscal year ending June 30, 2013, the aggregate amount
32 that is directed to be transferred from the state general fund to the
33 bioscience development and investment fund pursuant to subsection (d)(1)
34 plus interest earnings pursuant to subsection (d)(1) shall not exceed
35 \$12,287,267 for such fiscal year.

36 (j) During the fiscal year ending June 30, 2014, the aggregate amount
37 that is directed to be transferred from the state general fund to the
38 bioscience development and investment fund pursuant to subsection (d)(1)
39 plus interest earnings pursuant to subsection (d)(1) shall not exceed
40 \$10,000,000 for such fiscal year.

41 Sec. 3. K.S.A. 2013 Supp. 74-99b33 and 74-99b34 are hereby
42 repealed.

43 Sec. 4. This act shall take effect and be in force from and after its

- 1 publication in the statute book.