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MEMORANDUM

To: Chairman Tarwater and members of the House Committee on Commerce, Labor and Economic Development

From: Charles Reimer, Assistant Revisor of Statutes

Date: 1/31/2022

Subject: SB 347 As Amended by the Senate Committee on Commerce and the Senate Committee of the Whole

SB 347 establishes a new economic development program in the Department of Commerce aimed at attracting large manufacturing or corporate headquarters projects with a capital investment of at least \$1 billion dollars and attracting suppliers for the projects.

Section 1 (pages 1 – 5) of the bill sets forth the **definitions** for the terms used in the bill, including the definition for a “qualified firm” and “qualified supplier” that may be eligible for benefits.

A **qualified firm** is a business engaged in advanced manufacturing, aerospace, distribution, logistics and transportation, food and agriculture or professional and technical services that will locate a facility in Kansas. A qualified firm may also be eligible for benefits for a corporate headquarters project in Kansas and in that case may be a business in any industry. However, businesses engaged in mining, swine production, ranching or gaming are excluded.

A **qualified supplier** is a supplier of components, sub-assemblies, chemicals or other process-related tangible goods. A qualified supplier must be operating in Kansas for the purpose of supplying the qualified firm but need not be located in Kansas.

Section 2 (pages 5 – 10) is the **primary section describing the program and benefit eligibility requirements.**

To be **eligible**, a **qualified firm** must:

- (1) Commit to a capital investment of at least \$1 billion dollars to be made within five years in a business facility in Kansas;
- (2) commence commercial operations within five years; and
- (3) enter into an agreement with the secretary of commerce on terms and conditions as required by the secretary and including the commitments required under this act.

As **incentives**, a **qualified firm** may be eligible for:

- (1) A nonrefundable tax credit of up to 15% of the amount of the capital investment made in a qualified business facility (defined in section 1) each year for up to five years. (Sec. 3.)
- (2) Reimbursement of up to 10% of annual total payroll expense for employees at the facility. (Sec. 5.)
- (3) Reimbursement of up to 50% of eligible education and training costs for new employees. (Sec. 7.)
- (4) A property tax exemption of 50% for a business facility or headquarters located in a foreign trade zone. (Sec. 9.)
- (5) A sales tax exemption for materials and services costs associated with building the facility. (Sec. 10.)

To be **eligible**, a **qualified supplier** must:

- (1) Be selected by the qualified firm as one of five suppliers eligible for benefits;
- (2) meet an annual sales requirement to the qualified firm's manufacturing or headquarters facility of at least \$10 million; and
- (3) enter into an agreement with the secretary of commerce on terms and conditions as required by the secretary and including the commitments required by this act.

Qualified suppliers may be eligible for the **benefits** provided to qualified firms, including the investment tax credit, except that:

- (1) There is no minimum investment requirement; and

(2) instead of the total payroll reimbursement provision for qualified firms, qualified suppliers may retain up to 65% of their employees' payroll withholding taxes. (Sec. 4.)

Other Conditions

Qualified firms and qualified suppliers must meet the eligibility requirements each year to receive incentives, based on a review by the secretary of commerce. Qualified firms, at the direction of the secretary, must repay unearned benefits if the minimum investment of \$1 billion in the qualified business facility is not made. There is a construction completion bond requirement for qualified firms if they do not meet a minimum investment rating set by the secretary. Qualified suppliers must repay incentives if the qualified firm does not commence operations. Incentive recipients must agree to an audit by the secretary of revenue if requested by the secretary of commerce. Among other requirements, firms must also agree to provide information for purposes of the Department of Commerce's economic development program database. Firms may not participate in any other economic development program or fund administered by the department of commerce.

Factors for consideration by Secretary of Commerce

When the secretary of commerce exercises discretion in determining the amount of an incentive or the number of years an incentive is provided, the secretary considers factors that are provided section 3. These factors include:

- (1) The extent of prospective new employment, the quality of new jobs and wage or salary levels;
- (2) the total amount of investment;
- (3) the potential for development of the respective industry in Kansas, the potential for ancillary industry development and indirect economic development; and
- (4) the benefit to the local, regional or state economy, including the development of suppliers in Kansas.

Rule and Reg Authority

The secretary of commerce and secretary of revenue are granted authority to adopt rules and regulations for the implementation of this act in Section 2(j).

Section 3 (pages 10 – 12) sets out the **investment tax credit**. Starting with tax year 2022, the credit allowable for each year is based on the amount of the investment made by a qualified firm that year in the qualified business facility (defined in section 1) and is up to 15% of that investment. The investment tax credit is earned one year, then may be claimed by the qualified firm in three equal installments over the next 3 taxable years. The aggregate investment of at least \$1 billion must be completed within five years. Each installment is applied first against the taxpayer's tax liability and any remaining amount may be carried forward. However, any earned credit remaining unused after the three successive year period that installments for that credit may be claimed is forfeited.

Section 4 (pages 12-14) discusses the **payroll withholding tax retention benefit for qualified suppliers**. Starting with tax year 2022, a qualified supplier may retain up to 65% of the payroll taxes to be paid for its employees each year that it meets the requirements of the act, up to a period of 10 successive years.

Section 5 (pages 14-15) addresses the **reimbursement of annual total payroll costs for a qualified firm's employees at a qualified firm's facility**. Total payroll costs are defined in section 1, page 4. Up to 10% of the total payroll costs may be reimbursed for up to 10 successive years. Subject to appropriations, the benefit is paid from the attracting powerful economic expansion payroll incentive fund. This benefit is subject to appropriations.

Section 6 (pages 14-15) establishes the attracting powerful economic expansion payroll incentive fund to pay the benefit provided by section 5. The source of funds is appropriation acts of the legislature.

Section 7 (pages 15-16) provides a **training and education expense reimbursement benefit for both qualified firms and qualified suppliers**. Eligible expenses are defined in section 1, at page 5. Reimbursement may be for up to 50% of eligible expenses for new employees each year for up to five successive years. There is a maximum limit of \$5,000,000 per business per year. Reimbursements are made by the secretary from the attracting powerful economic expansion new employee training and education fund. This benefit is subject to appropriations.

Section 8 (page 16) creates the attracting powerful economic expansion new employee training and education fund to pay the benefits provided by section 7. The source of funds is appropriations acts of the legislature.

Section 9 (page 17) starting tax year 2022, allows a **property tax exemption of 50%** for real property taxes levied on any new manufacturing property or new headquarters that is located in a foreign trade zone, owned by a qualified firm or qualified supplier and is participating in a foreign trade zone program. The exemption applies to real property purchased or constructed after December 31, 2021, that is regularly used to manufacture and produce goods for one or more of the following industries: advanced manufacturing; aerospace; distribution, logistics and transportation; food and agriculture; or professional and technical services. A headquarters facility may be for a business engaged in any industry. The exemption applies for as long as the manufacturing operations or headquarters operations continue. The qualified firm or qualified supplier must be in compliance with the requirements of section 2, including, in the case of a qualified firm, the \$1 billion investment requirement.

Section 10 (pages 17-18) allows qualified firms or qualified suppliers a **sales tax exemption for construction materials and services** for building or improving a qualified business facility (defined in section 1). This benefit is available upon publication of the bill in the Kansas register. Qualified firms are eligible on the date construction of the qualified building facility commences. Qualified suppliers are eligible on the date designated by the qualified firm as a qualified supplier. The secretary of commerce certifies to the secretary of revenue that a qualified supplier is eligible and the date of eligibility. Before an exemption is issued, the secretary of commerce must certify to the secretary of revenue that the firm meets all requirements of this act and the agreement.

Section 11 (page 18) requires the secretary of commerce to provide **annual reports to the Governor, the Senate Commerce Committee and the House Commerce, Labor and Economic Development Committee**. The reports include the names, location and description of benefit recipients, the economic impact of the business operations, the number of new employees hired and wages, the annual and cumulative amount of investment, the annual amount of each benefit provided, the estimated net state fiscal impact and an estimate of the multiplier effect on the Kansas economy of the benefits awarded.

In addition, the secretary of commerce is to transmit a **quarterly report to the chairpersons of the Senate and House commerce committees** on the number of projects that may qualify for incentives.

Section 12 (page 19) provides for a **.05% reduction in the corporate income tax rate** for each tax year following a fiscal year in which a qualified firm or qualified supplier receives benefits under this act. The secretary of commerce certifies this to the secretary of revenue, who then reduces the rate. The normal tax rate is first reduced to 0%, and then reductions are applied to the surtax until the rate is 0%.

Section 13 (pages 19 to 22) amends K.S.A. 79-32,110 for purposes of the 0.05% corporate income tax reduction pursuant to section 12.

Section 14 (page 22-59) amends K.S.A. 2021 Supp. 79-3606 to add the new sales tax exemption discussed in section 10.

Section 15 (page 59) **sunsets** the provisions of the bill. No agreement may be entered into by the secretary on and after March 31, 2023.

The bill is effective upon publication in the Kansas register.