

## HOUSE BILL No. 2702

By Committee on Commerce, Labor and Economic Development

2-14

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1 AN ACT concerning economic development; relating to the high  
2 performance incentive fund; workforce training program participation  
3 requirements; workforce training tax credit; amending K.S.A. 74-  
4 50,133 and 79-32,160a and repealing the existing sections.

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

7 Section 1. K.S.A. 74-50,133 is hereby amended to read as follows:  
8 74-50,133. There is hereby created within the department of commerce the  
9 "high performance incentive fund" to provide matching funds for business  
10 assistance and consulting services to qualified firms under the provisions  
11 of K.S.A. 74-50,131, and amendments thereto, *or* that are entitled to a  
12 workforce training tax credit under the provisions of K.S.A. 74-50,132,  
13 and amendments thereto, ~~or have received written approval for and are~~  
14 ~~participating, at the time the funds are sought, in the Kansas industrial~~  
15 ~~training, Kansas industrial retraining or state of Kansas investments in~~  
16 ~~lifelong learning program,~~ subject to appropriation of funds and program  
17 criteria, as ~~hereinafter~~ provided *in this section*. The department of  
18 commerce may provide funds to qualified firms, on a matching basis, to  
19 pay up to 50% of such firm's costs of acquiring consulting services  
20 provided by the mid-America manufacturing technology center, or  
21 approved private consultants to assist in improving the firm's management,  
22 production processes or product or service quality. Qualified firms also  
23 shall receive priority consideration for any other business assistance  
24 programs administered by the department of commerce.

25 Sec. 2. K.S.A. 79-32,160a is hereby amended to read as follows: 79-  
26 32,160a. (a) For taxable years commencing after December 31, 1999, and  
27 before January 1, 2012, any taxpayer who shall invest in a qualified  
28 business facility, as defined in ~~subsection (b) of~~ K.S.A. 79-32,154(b), and  
29 amendments thereto, and effective for tax years commencing after  
30 December 31, 2010, and before January 1, 2012, located in an area other  
31 than a metropolitan county as defined in either K.S.A.: 74-50,114 or 74-  
32 50,211, and amendments thereto, and also meets the definition of a  
33 business in ~~subsection (b) of~~ K.S.A. 74-50,114(b), and amendments  
34 thereto, shall be allowed a credit for such investment, in an amount  
35 determined under subsection (b) or (c), as the case requires, against the tax  
36 imposed by the Kansas income tax act or where the qualified business

1 facility is the principal place from which the trade or business of the  
2 taxpayer is directed or managed and the facility has facilitated the creation  
3 of at least 20 new full-time positions, against the premium tax or privilege  
4 fees imposed pursuant to K.S.A. 40-252, and amendments thereto, or as  
5 measured by the net income of financial institutions imposed pursuant to  
6 article 11 of chapter 79 of the Kansas Statutes Annotated, and amendments  
7 thereto, for the taxable year during which commencement of commercial  
8 operations, as defined in ~~subsection (f) of K.S.A. 79-32,154(f)~~, and  
9 amendments thereto, occurs at such qualified business facility. In the case  
10 of a taxpayer who meets the definition of a manufacturing business in  
11 ~~subsection (d) of K.S.A. 74-50,114(d)~~, and amendments thereto, no credit  
12 shall be allowed under this section unless the number of qualified business  
13 facility employees, as determined under ~~subsection (d) of K.S.A. 79-~~  
14 ~~32,154(d)~~, and amendments thereto, engaged or maintained in employment  
15 at the qualified business facility as a direct result of the investment by the  
16 taxpayer for the taxable year for which the credit is claimed equals or  
17 exceeds two. In the case of a taxpayer who meets the definition of a  
18 nonmanufacturing business in ~~subsection (f) of K.S.A. 74-50,114(f)~~, and  
19 amendments thereto, no credit shall be allowed under this section unless  
20 the number of qualified business facility employees, as determined under  
21 ~~subsection (d) of K.S.A. 79-32,154(d)~~, and amendments thereto, engaged  
22 or maintained in employment at the qualified business facility as a direct  
23 result of the investment by the taxpayer for the taxable year for which the  
24 credit is claimed equals or exceeds five. Where an employee performs  
25 services for the taxpayer outside the qualified business facility, the  
26 employee shall be considered engaged or maintained in employment at the  
27 qualified business facility if: (1) The employee's service performed outside  
28 the qualified business facility is incidental to the employee's service inside  
29 the qualified business facility; or (2) the base of operations or, the place  
30 from which the service is directed or controlled, is at the qualified business  
31 facility.

32 (b) The credit allowed by subsection (a) for any taxpayer who invests  
33 in a qualified business facility ~~which~~ that is located in a designated  
34 nonmetropolitan region established under K.S.A. 74-50,116, and  
35 amendments thereto, on or after the effective date of this act, shall be a  
36 portion of the income tax imposed by the Kansas income tax act on the  
37 taxpayer's Kansas taxable income, the premium tax or privilege fees  
38 imposed pursuant to K.S.A. 40-252, and amendments thereto, or the  
39 privilege tax as measured by the net income of financial institutions  
40 imposed pursuant to article 11 of chapter 79 of the Kansas Statutes  
41 Annotated, and amendments thereto, for the taxable year for which such  
42 credit is allowed, but in the case where the qualified business facility  
43 investment was made prior to January 1, 1996, not in excess of 50% of

1 such tax. Such portion shall be an amount equal to the sum of the  
 2 following:

3 (1) Two thousand five hundred dollars for each qualified business  
 4 facility employee determined under K.S.A. 79-32,154, and amendments  
 5 thereto; plus

6 (2) one thousand dollars for each \$100,000, or major fraction thereof,  
 7 which shall be deemed to be 51% or more, in qualified business facility  
 8 investment, as determined under K.S.A. 79-32,154, and amendments  
 9 thereto.

10 (c) The credit allowed by subsection (a) for any taxpayer who invests  
 11 in a qualified business facility, ~~which~~ *that* is not located in a  
 12 nonmetropolitan region established under K.S.A. 74-50,116, and  
 13 amendments thereto, and effective for tax years commencing after  
 14 December 31, 2010, and before January 1, 2012, located in an area other  
 15 than a metropolitan county as defined in either K.S.A. 74-50,114 or 74-  
 16 50,211, and amendments thereto, and ~~which~~ *that* also meets the definition  
 17 of business in ~~subsection (b) of~~ K.S.A. 74-50,114(b), and amendments  
 18 thereto, on or after the effective date of this act, shall be a portion of the  
 19 income tax imposed by the Kansas income tax act on the taxpayer's  
 20 Kansas taxable income, the premium tax or privilege fees imposed  
 21 pursuant to K.S.A. 40-252, and amendments thereto, or the privilege tax as  
 22 measured by the net income of financial institutions imposed pursuant to  
 23 article 11 of chapter 79 of the Kansas Statutes Annotated, and amendments  
 24 thereto, for the taxable year for which such credit is allowed, but in the  
 25 case where the qualified business facility investment was made prior to  
 26 January 1, 1996, not in excess of 50% of such tax. Such portion shall be an  
 27 amount equal to the sum of the following:

28 (1) One thousand five hundred dollars for each qualified business  
 29 facility employee as determined under K.S.A. 79-32,154, and amendments  
 30 thereto; and

31 (2) one thousand dollars for each \$100,000, or major fraction thereof,  
 32 which shall be deemed to be 51% or more, in qualified business facility  
 33 investment as determined under K.S.A. 79-32,154, and amendments  
 34 thereto.

35 (d) The credit allowed by subsection (a) for each qualified business  
 36 facility employee and for qualified business facility investment shall be a  
 37 one-time credit. If the amount of the credit allowed under subsection (a)  
 38 exceeds the tax imposed by the Kansas income tax act on the taxpayer's  
 39 Kansas taxable income, the premium tax and privilege fees imposed  
 40 pursuant to K.S.A. 40-252, and amendments thereto, or the privilege tax as  
 41 measured by the net income of financial institutions imposed pursuant to  
 42 article 11 of chapter 79 of the Kansas Statutes Annotated, and amendments  
 43 thereto, for the taxable year, or in the case where the qualified business

1 facility investment was made prior to January 1, 1996, 50% of such tax  
2 imposed upon the amount which exceeds such tax liability or such portion  
3 thereof may be carried over for credit in the same manner in the  
4 succeeding taxable years until the total amount of such credit is used.  
5 Except that, before the credit is allowed, a taxpayer, who meets the  
6 definition of a manufacturing business in ~~subsection (d)~~ of K.S.A. 74-  
7 50,114(d), and amendments thereto, shall recertify annually that the net  
8 increase of a minimum of two qualified business facility employees has  
9 continued to be maintained and a taxpayer, who meets the definition of a  
10 nonmanufacturing business in ~~subsection (f)~~ of K.S.A. 74-50,114(f), and  
11 amendments thereto, shall recertify annually that the net increase of a  
12 minimum of five qualified business employees has continued to be  
13 maintained.

14 (e) Notwithstanding the foregoing provisions of this section, and  
15 except as otherwise provided in this subsection, any taxpayer qualified and  
16 certified under the provisions of K.S.A. 74-50,131, and amendments  
17 thereto; ~~which, that~~ prior to making a commitment to invest in a qualified  
18 Kansas business, has filed a certificate of intent to invest in a qualified  
19 business facility in a form satisfactory to the secretary of commerce; ~~and~~  
20 ~~that has received written approval from the secretary of commerce for~~  
21 ~~participation and has participated, during the tax year for which the~~  
22 ~~exemption is claimed, in the Kansas industrial training, Kansas industrial~~  
23 ~~retraining or the state of Kansas investments in lifelong learning program~~  
24 ~~or is eligible for the tax credit established in K.S.A. 74-50,132, and~~  
25 ~~amendments thereto~~, shall be entitled to a credit in an amount equal to  
26 10% of that portion of the qualified business facility investment which  
27 exceeds \$50,000 in lieu of the credit provided in subsection (b)(2) or (c)(2)  
28 without regard to the number of qualified business facility employees  
29 engaged or maintained in employment at the qualified business facility.  
30 For tax years beginning on or after January 1, 2012, for a qualified  
31 business facility investment in Douglas, Johnson, Sedgwick, Shawnee or  
32 Wyandotte ~~counties~~ county, such credit shall be in an amount equal to 10%  
33 of that portion of the qualified business facility investment which exceeds  
34 \$1,000,000. Any taxpayer who has filed a certificate of intent to invest in a  
35 qualified business facility pursuant to this subsection in Douglas, Johnson,  
36 Sedgwick, Shawnee or Wyandotte county prior to December 31, 2011, and  
37 commences investments in a qualified business facility prior to December  
38 31, 2013, may claim credits under K.S.A. 74-50,131, 74-50,132 and  
39 ~~subsection (e) of 79-32,160a(e)~~, and amendments thereto, in an amount  
40 equal to 10% of that portion of the qualified business facility investment  
41 which exceeds \$50,000. Timing modifications may be authorized at the  
42 discretion of the secretary of commerce and the secretary of revenue  
43 during the transition period. The credit allowed by this subsection shall be

1 a one-time credit. If the amount thereof exceeds the tax imposed by the  
2 Kansas income tax act on the taxpayer's Kansas taxable income or the  
3 premium tax or privilege fees imposed pursuant to K.S.A. 40-252, and  
4 amendments thereto, or the privilege tax as measured by net income of  
5 financial institutions imposed pursuant to article 11 of chapter 79 of the  
6 Kansas Statutes Annotated, and amendments thereto, for the taxable year,  
7 the amount thereof which exceeds such tax liability may be carried  
8 forward for credit in the succeeding taxable year or years until the total  
9 amount of the tax credit is used, except that no such tax credit shall be  
10 carried forward for deduction after the 16<sup>th</sup> taxable year succeeding the  
11 taxable year in which such credit initially was claimed, and no  
12 carryforward shall be allowed for deduction in any succeeding taxable  
13 year unless the taxpayer certifies under oath that the taxpayer continues to  
14 meet the requirements of K.S.A. 74-50,131, and amendments thereto, and  
15 this act. In no event shall any credit allowed under this section that expired  
16 during any taxable year prior to the taxable year commencing January 1,  
17 2011, be revived under the provisions of this act.

18 (f) For tax years commencing after December 31, 2005, any taxpayer  
19 claiming credits pursuant to this section, as a condition for claiming and  
20 qualifying for such credits, shall provide information pursuant to K.S.A.  
21 79-32,243, and amendments thereto, as part of the tax return in which such  
22 credits are claimed. Such credits shall not be denied solely on the basis of  
23 the contents of the information provided by the taxpayer pursuant to  
24 K.S.A. 79-32,243, and amendments thereto.

25 (g) This section and K.S.A. 79-32,160b, and amendments thereto,  
26 shall be *a* part of and supplemental to the job expansion and investment  
27 credit act of 1976, and amendments thereto.

28 Sec. 3. K.S.A. 74-50,133 and 79-32,160a are hereby repealed.

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