

MINUTES OF THE JOINT MEETING  
SENATE ASSESSMENT & TAXATION COMMITTEE AND SENATE COMMERCE COMMITTEE

The meeting was called to order by Chairman Barbara Allen at 9:40 A.M. on February 1, 2008 in Room 519-S of the Capitol.

All members were present except Senator Schodorf-excused

## Committee staff present:

Gordon Self, Office of Revisor of Statutes  
Chris Courtwright, Kansas Legislative Research Department  
Scott Wells, Office of Revisor of Statutes  
Ryan Hoffman, Kansas Legislative Research Department  
Kathie Sparks, Kansas Legislative Research Department  
Jason Long, Office of Revisor of Statutes  
Jennifer Thierer, Kansas Legislative Research Department  
Judy Swanson, Committee Assistant  
Jackie Lunn, Committee Assistant

## Conferees appearing before the committee:

Dave Kerr, Secretary, Kansas Department of Commerce  
Kathleen Smith, Tax Specialist, Kansas Department of Revenue  
David Bybee, Manager of HPIP, Kansas Department of Commerce  
Betty Nelson, CBIZ, Leawood, Kansas  
Marlee Carpenter, Kansas Chamber  
Kent Eckles, Overland Park Chamber of Commerce  
Christy Caldwell, Greater Topeka Chamber of Commerce  
Ashley Sherard, Lenexa Chamber of Commerce  
Bernie Koch, Wichita Metro Chamber of Commerce (Written only)  
Duane Simpson, Kansas Association of Ethanol Processors (Written only)  
Eric Stafford, Associated Contractors of Kansas (Written only)

## Others attending:

See attached list.

Chairman Allen and Senator Brownlee welcomed members of the Joint Committee.

Hearing on **SB 497—Creating the Kansas investment credit act and the Kansas jobs credit act—was opened.**

Senator Brownlee said **SB 497** was jointly referred to both Senate Assessment & Taxation and Senate Commerce Committee, so it must be voted on jointly.

David Kerr, Secretary, Kansas Department of Commerce (KDOC), presented an overview of the Tax Incentive Package in **SB 497**. (Attachment 1) He reviewed the four objectives:

1. Establish a Selectively Applied Tax Credit Cash Refund Program
2. Establish the Creation of Opportunity Zones
3. Replace Existing Tax Credit Programs with Streamlined Investment Tax Credit and Job creation Credit Plans
4. Simplify Qualified Investment Calculation for Investment-Based Credits

Kathleen Smith, Tax Specialist, Kansas Department of Revenue (KDOR), presented a report showing the differences in benefits and requirements among existing HPIP, Enterprise Zone Program (EZ), Business & Jobs Program (B&J), and **SB 497**. (Attachment 2) Some of the differences between the existing programs and the proposed programs include:

- Creation of new enhanced investment and job creation tax credits for businesses in disadvantaged areas
- Higher threshold, but all qualifying investment earns credits; a one-time credit versus B&J method
- Carry-forward 10 years of unused investment tax credits compared to indefinitely for EZ and 10-year running claim for B&J

## CONTINUATION SHEET

MINUTES OF THE Senate Assessment and Taxation Committee at 10:0 A.M. on February 1, 2008 in Room 519-S of the Capitol.

- Cash-in-lieu of investment credits is a new benefit
- Sales tax exemption is the same as for HPIP & Enterprise Zone
- HPIP training tax credit is eliminated
- Job creation is de-coupled from investment requirement

Among differences in requirements are:

- Changes in NAICS code
- Eliminates the HPIP training requirement
- Simpler tax credit calculations, based on newly added investment that is in-service at year-end and newly added employees still working at year-end

Ms. Smith will provide a specific breakdown of the NAICS category codes for committee members, both currently being used and those proposed in **SB 497**. She was also requested to provide a list county by county of non-retail businesses in counties of under 20,000 population that would have qualified under the new bill in the Enterprise Zones in the past ten years. Under the new proposal, there would be no NAICS requirement for a business in a disaster area that has been designated as an Opportunity Zone.

In response to Senator Lee, Secretary Kerr said KDOC proposes a waiver of NAICS codes in Opportunity Zones (OZ), but that is not reflected in the bill. Ms. Smith said Opportunity Zones are established through the KDOC, and would be reviewed after a period of three years. Criteria for designation of an OZ are that it must be at minimum one whole county and it must be in a disadvantaged economic area. Ms. Smith will provide a map of counties designated as micropolitan areas. Senator Brownlee said it does not appear the complicated application process has been simplified much. She said the “construction” industry was left out of the eligible NAICS codes and feels it is important to have it included.

David Bybee, HPIP Manager, KDOC, explained the current HPIP application process. In response to Senator Kelly, he said there could be a problem in calculating “hires” because a company could hire someone on December 31 and fire that person on January 1. Ms. Smith will look into tightening that problem up. In response to Senator Wagle, Mr. Bybee provided the website for filing forms: [www.kansascommerce.com](http://www.kansascommerce.com)

In response to Chairman Allen, Secretary Kerr said it was his understanding the \$300,000 Job Creation Tax Credit level in the bill came as a result from deliberations in Commerce Committee last session, however he was not involved at the time. He suggested criteria also include number of jobs created, wages, investment made, plus others yet to be determined.

The \$10 million annual appropriation for the tax credit cash refund would not be distributed on a first-come, first-serve basis per Secretary Kerr. He said KDOC would set up an application process, and take applications for the entire year. Objective criteria must be set in determining how cash refunds are awarded. There would not be a cap per individual company.

Senator Apple expressed concern that Miami County would not qualify as an entire county to be an Opportunity Zone, yet one portion of the county would qualify. Secretary Kerr said his staff is trying to find a way to address that issue.

Discussion was held between Senator Wagle and Secretary Kerr concerning Kansas, Inc.’s “tax expensing”. This idea was considered by the Joint Committee on Economic Development and is contained in 2008 **SB 571**.

Betty Nelson, CBIZ Accounting, testified she works with clients every day who are expanding, creating jobs and adding capital investments in Kansas. (Attachment 3) She is pleased with the proposal to refund up to 40% of a specific company’s tax credits in a given year, but is concerned about how those who are allowed to receive a refund will be selected. She proposed the investment tax credit threshold should be no more than \$150,000. She also proposed the training tax credit should be a separate tax credit. This would allow all companies that meet the NAICS code requirements and wage standards to receive a tax credit for investing in human capital, for training that exceeds 2% of their gross payroll.

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Marlee Carpenter, Kansas Chamber, testified the Kansas Chamber supports the simplification of the current investment tax credits. (Attachment 4) The Chamber supports the threshold amount being lowered from \$300,000 to \$150,000 maximum and would like to see the 50% of sales requirement eliminated from the bill. The Chamber has some concerns with the structure of the refund program, and would like to see some additional criteria enacted into law. Ms. Carpenter had concern about the fiscal note because she had not yet had the opportunity to review it.

Kent Eckles, Overland Park Chamber of Commerce, testified the Chamber supports the concept of making tax credits refundable and simplifying the process. (Attachment 5) The Overland Park Chamber would prefer “sellable” tax credits and is concerned about the \$10 million per year cap on tax credits that may be refunded.

Christy Caldwell, Greater Topeka Chamber of Commerce, testified changes in tax credit legislation are needed but must be considered carefully. (Attachment 6) She is concerned the bill does not outline the methodology that will be used to determine when the KDOC will authorize a tax credit refund, expected qualifications, etc. She felt the \$300,000 investment to access the 10% investment tax credit is too high.

Ashley Sherard, Lenexa Chamber of Commerce, testified the Chamber supports **SB 497**, but has several concerns. (Attachment 7) Lenexa does not believe the proposals to increase the investment tax credit eligibility threshold to \$300,000 and eliminate the current training tax credit program are good public policy. Ms. Sherard proposed eliminating the requirement that a company must derive at least 50% of its revenue from outside Kansas, increasing the cap on the refundability program from the proposed \$10 million, and lowering the default wage requirement when determining wage eligibility.

Written testimony supporting **SB 497** was received from Bernie Koch, Wichita Metro Chamber of Commerce. (Attachment 8)

Neutral written testimony was received from Duane Simpson, Association of Ethanol Processors. (Attachment 9)

In response to Senator Teichman, Chairman Allen said conferees from rural or disaster areas were not specifically invited to testify, but public notice of the Committee meeting had been posted for over a week. It was noted Senator Teichman and Senator Apple represent rural areas, and Senator Schmidt represents a disaster area.

During brief committee discussion, Senator Donovan said if the credit cap is \$10 million annually, one large company could use up that credit. He thought this would build up another large amount of unused tax credits. Secretary Kerr said this tax credit is not intended to be used as a recruitment tool for businesses to come to Kansas, but rather as a tool for businesses already located in Kansas.

Senator Brownlee requested the following information from Staff:

- Information from the State of Oklahoma’s Oklahoma Opportunity Fund to which Mr. Koch referred in his written testimony (KLRD)
- More information about “selling” tax credits which Mr. Simpson referred to in his written testimony (KLRD)
- A “net” fiscal note (KDOR)

Being no further business, the meeting adjourned at 10:00 a.m. The next Joint Meeting of Senate Assessment & Taxation and Senate Commerce Committee will be February 8, at 9:30 a.m. in Room 123-S.