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300 SW TENTH AVENUE ▪ SUITE 24-E ▪ TOPEKA, KS 66612 ▪ (785) 296-2321

MEMORANDUM

To: Senate Committee on Commerce

From: The Office of Revisor of Statutes

Date: 04/26/2023

Re: S.B. 325; Establishing the transformation of passenger and freight vehicle industry program to attract businesses engaged in electric motor vehicle and hydrogen-powered vehicle production by offering qualified companies that meet certain requirements an investment tax credit, retention of a percentage of total payroll tax, reimbursement of a percentage of eligible employee training and education expenses and a sales tax exemption for construction costs of the qualified company's qualified business facility.

New Section 1 would serve as the definitions section of the act.¹

New Sec. 2. would establish the act's incentive program (pg. 3, ln. 23), which would be administered by the secretary of commerce. The section states the purpose of the program (pg. 3, ln. 25) and lists the incentives that the program may provide to a qualified company or companies (pg. 3, ln. 31). To receive an incentive under the program, a qualified company, or two or more qualified companies jointly, would not only be required to meet the unique requirements of each individual incentive but would also need to fulfill the general requirements that are listed starting on pg. 7, ln. 6. The secretary of commerce would be required to conduct an

¹ One key term is "qualified company", which would mean "a for-profit business establishment, subject to state income, sales or property taxes, that is:

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

(i) Electric or hydrogen-powered motor vehicle manufacturing;

(ii) battery manufacturing;

(iii) research and development operation; or

(iv) headquarters for any of the industries described in clauses (i) through (iii);

(B) 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;

(C) a supplier of components, sub-assemblies, chemicals or other process-related tangible goods, is located in Kansas and is owned by:

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

(ii) 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 in the state of Kansas for the purpose of supplying a qualified company engaged in qualified activities; and

(D) eligible for benefits under this act as determined by the secretary."

annual review of such company's activities (pg. 7, ln. 42) and certify annually to the secretary of revenue that the company meets criteria and is eligible for benefits (pg. 8, ln. 8). A qualified company's confidential information would not be subject to the Kansas open records act but would need to be provided to the division of legislative post audit upon request (pg. 8, ln. 16). Books and records that pertain to eligibility for benefits or compliance under the act would be available for inspection by the secretary upon meeting certain conditions (pg. 8, ln. 26). The secretary of revenue, in consultation with the secretary of commerce, would be required to develop a form that must be completed annually by any qualified company that receives a tax incentive under sections 3 or 4 (pg. 8, ln. 41). The secretary of commerce or the secretary of revenue could adopt rules and regulations to implement the act (pg. 9, ln. 7).

New Sec. 3. would establish an investment tax credit for qualified companies. The credit could be earned each taxable year based on the amount of the qualified investment² made in that taxable year (pg. 9, ln. 18). The entire amount of the credit could not be claimed in the same taxable year it is earned but would be divided into equal portions or installments for not less than a total of five taxable years (pg. 9, lines 20-28). For eligible projects located inside of a metropolitan county³, the amount of the tax credit earned in a taxable year would be up to 10% of the entire amount of the qualified investment. For eligible projects located outside of a metropolitan county, the amount of the tax credit earned in a taxable year would be 10% of the company's qualified investment. The qualified investment would need to be at least \$250,000,000 for a company wishing to construct a qualified business facility⁴ for an electric or hydrogen motor vehicle assembly operation project (pg. 9, ln. 38). A percentage of the credit would be refundable (pg. 10, ln. 1). The company would need to repay all received credits if the investment is not completed by the agreed upon time (pg. 9, ln. 41) and, if the company breaches the terms of the agreement and fails to reach at least 90% of the required qualified investment, the company would be liable for repaying not only the received credits but also all other benefits received under the act (pg. 10, ln. 21).

New Sec. 4. would allow a qualified company to retain up to 100% of the company's Kansas payroll withholding taxes in a taxable year that the company maintains a median wage or

² Defined on pg. 3, ln. 38.

³ "Metropolitan county" means the county of Douglas, Johnson, Leavenworth, Sedgwick, Shawnee or Wyandotte.

⁴ Defined on pg. 2, ln. 42.

average wage paid to the new employees⁵ that is equal to or greater than 120% of the county median wage⁶ throughout the term of the agreement (pg. 10, ln. 34). The benefit would be available for up to 10 successive taxable years (pg. 11, ln. 1). If the qualified company violates the agreement and is unable to hire and retain a minimum of 90% of the number of new employees, the company would have to repay the benefit pursuant to pg. 11, lines 21-26.

New Sec. 5. would allow a qualified company to receive reimbursement for up to one year of training or education expenses⁷ for training or education that is completed by each new employee that can establish residency in Kansas at the completion of such training or education and is employed at the company's qualified business facility (pg. 12, ln. 1 and 13). The maximum amount of such reimbursement paid to a qualified company would be \$5,000,000 per qualified project (pg. 12, ln. 7). If the company breaches the agreement, such reimbursements would be required to be repaid (pg. 12, ln. 39).

New Sec. 6. would establish the transformation of passenger and freight vehicle industry act new employee training and education fund (pg. 12, ln. 43). The fund would be used to facilitate the reimbursements under New Sec. 5.

New Sec. 7. and Sec. 9 would allow qualified companies to be eligible for a sales tax exemption for: (1) All sales of tangible personal property or services purchased for the purpose of and in conjunction with constructing, reconstructing, enlarging or remodeling a qualified business facility; and (2) the sale and installation of machinery and equipment purchased by such qualified company (pg. 13, ln. 13; pg. 51, ln 10). If the company breaches the agreement, the company would be required to repay an amount pursuant to pg. 14, lines 3-6.

New Sec. 8. would require the secretary of commerce to transmit an annual report concerning the implementation of the act to the governor and the tax and commerce committees (pg. 14 ln. 7).

S.B. 325 would become effective upon publication in the statute book.

⁵ Defined on pg. 2, ln. 25.

⁶ Defined on pg. 2, ln. 2.

⁷ Defined on pg. 5, ln. 34.