

Approved 2-21-89
Date

MINUTES OF THE SENATE COMMITTEE ON ECONOMIC DEVELOPMENT

The meeting was called to order by Senator Dave Kerr at
Chairperson

8:00 a.m./p.m. on February 14, 1989 in room 123-S of the Capitol.

All members were present except:

Committee staff present:

Bill Edds, Revisor of Statutes' Office
Lynne Holt, Kans Leg Research Dept
Carol de la Torre, Secretary to the Committee

Conferees appearing before the committee:

The meeting was called to order by the Chairman Senator Dave Kerr.

The Committee continued discussion on the balloon version of Senate Bill 21. (Attachment 1)

The balloon on line 62 was explained by the Chairman. Since the Committee was satisfied with the language, no amendment was made.

It was moved by Senator Francisco and seconded by Senator Oleen that the balloon on line 67 be adopted. Motion carried.

Senator Francisco moved and Senator Salisbury seconded that the balloon on line 70 regarding the application fee in an amount not less than \$100 in addition to a fee in an amount equal to ½ of 1% per annum be adopted. Motion carried.

After discussion of the balloon on lines 77-80, it was moved by Senator Steineger and seconded by Senator Oleen that the Secretary of Commerce serve as a non-voting, ex officio chairman of this four member committee. The other three members terms would be appropriately staggered. Senator Steineger amended his motion to read three members, at least one of whom would have international financial experience. (Lines 75 and 76). Motion carried.

Senator Steineger moved to make all guarantee of public funds subject to action of the committee, of which the Secretary of Commerce is the chairman. Senator Kerr explained that this motion is for the Committee to reconsider its action on lines 48 and 49, where it had previously adopted a \$50,000 limit for the Secretary to make loan guarantees. The motion was seconded by Senator Karr. Motion carried. Language is back as originally presented. This amendment affects the suggested change in line 82, which now remains as originally printed. The Chairman requested the Revisor to determine if conference calls constituted a meeting.

Senator Steineger moved and Senator Feleciano seconded that an annual report showing the loan guarantee activity be required. It should be submitted to the Governor and

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON ECONOMIC DEVELOPMENT,

room 123-S Statehouse, at 8:00 a.m./p/m on February 14, 1989

Senate and House Economic Development Committees. Motion carried.

Senator Salisbury moved and Senator Karr seconded that the improved language on line 109 be adopted. Motion carried.

It was moved by Senator Salisbury and seconded by Senator Francisco that Senate Bill 21, as amended, be reported favorably for passage. Motion carried.

The Chairman asked the Committee to turn its attention to Senate Bill 101, a bill raising the cap on venture investments eligible for 25% tax credit, from \$24 million to \$40 million. The Chairman pointed out that the Committee members had received a letter from Jerry Mallot, Enterprise Management Incorporated, requesting a possible amendment to allow a three-year carryback. His proposed changes are found in Attachment 2. After discussion the Chairman advised the Committee that it would take further action on the bill February 15, 1989.

Minutes of the February 10, 1989, meeting were reviewed by the Committee. It was moved by Senator Winter and seconded by Senator Karr that they be approved. Motion carried.

There being no further business, the meeting was adjourned.

SENATE BILL No. 21

By Joint Committee on Economic Development

1-9

Sen Eco - Advers
22-14-89
Attachment 1

16 AN ACT concerning economic development; relating to the financing
17 of exports from Kansas; prescribing certain powers, duties and
18 functions for the secretary of commerce;

establishing the Kansas export loan guarantee review committee;
establishing the Kansas export loan guarantee fund in the state treasury.

19
20 *Be it enacted by the Legislature of the State of Kansas:*

21 Section 1. This act shall be known and may be cited as the
22 Kansas export finance act.

23 Sec. 2. As used in this act:

24 (a) "Kansas export transaction" means a transaction for the export
25 of products from Kansas to a destination outside the 50 states of the
26 United States of America, ~~which are substantially manufactured~~
27 ~~within Kansas;~~

substantially manufactured within Kansas or services which result in
additional employment within Kansas

28 (b) "preexport" means the period of time between the formation
29 of a Kansas export transaction and the actual shipment of the prod-
30 ucts; and

or performance of the services

31 (c) "postexport" means the period of time between a shipment
32 of products for a Kansas export transaction and the receipt of final
33 payment therefor.

or performance of services

34 Sec. 3. (a) Subject to the provisions of appropriations acts, the
35 secretary of commerce is hereby authorized to enter into agreements
36 with Kansas exporters and financial institutions, and with other public
37 or private entities including agencies of the United States govern-
38 ment or foreign governments, to provide insurance, coinsurance and
39 guarantees against commercial preexport and postexport credit risks
40 for Kansas export transactions in accordance with this act.

, reinsurance

41 (b) The secretary of commerce shall administer the provisions of
42 this act and may adopt rules and regulations which are deemed
necessary by the secretary for such administration.

44 Sec. 4. (a) Each agreement entered into by the secretary of com-
 45 merce to guarantee against commercial preexport and postexport
 46 commercial credit risks for a Kansas export transaction shall be
 47 backed by moneys credited to the Kansas export loan guarantee fund
 48 and shall receive prior approval by the Kansas export loan guarantee
 49 review committee. No agreement shall be executed guaranteeing any
 50 amount for a Kansas export transaction which together with all other
 51 such agreements in effect would guarantee an aggregate amount
 52 exceeding 400% of the moneys in the Kansas export loan guarantee
 53 fund on the date such agreement would otherwise become effective.
 54 No such agreement shall provide a guarantee for more than 90% of
 55 the loan financing of the Kansas export transaction, including the
 56 principal and any interest thereon, or shall cover more than \$300,000
 57 of the loan financing, including the principal and any interest
 58 thereon, for any individual Kansas export transaction. The remaining
 59 credit risk for any such loan financing may be covered by a financial
 60 institution providing the loan or by other appropriate entities.

any agreement guaranteeing a Kansas export transaction in an amount exceeding \$50,000

The secretary may submit any agreement guaranteeing a Kansas export transaction in any amount not exceeding \$50,000 to such committee for approval.

COLLATERAL ISSUE

61 (b) No guarantee may be provided under this section for a period
 62 of more than 360 days. No guarantee may be provided under this
 63 section for a Kansas export transaction unless the loan financing
 64 therefor is provided entirely by one or more Kansas financial insti-
 65 tutions, except that the loan financing or any part thereof may be
 66 provided by other financial institutions ~~if such loan financing or part~~
 67 ~~thereof cannot be obtained from Kansas financial institutions for the~~
 68 ~~Kansas export transaction.~~

, except that a guarantee may be renewed for an additional period of not to exceed 120 days upon approval by the secretary of commerce

upon a finding by the Kansas export loan guarantee committee that funding by one or more Kansas financial institutions cannot reasonably be obtained. Priority shall be accorded for guarantees of Kansas export transactions of companies which have not previously engaged in exporting activities or companies which intend to substantially expand exporting activities

69 (c) The secretary of commerce shall charge and collect a Kansas
 70 export loan financing guarantee ~~fee equal to 1%~~ of the amount guar-
 71 anteed for each guarantee provided under this section.

application fee in an amount not less than \$100 in addition to a fee in an amount equal to 1/2 of 1% per annum

72 Sec. 5. (a) There is hereby established the Kansas export loan
 73 guarantee review committee within the department of commerce.
 74 The committee shall consist of five members who have appropriate
 75 experience and expertise in areas of commercial finance, including
 76 international finance. The members of the committee shall be ap-
 77 pointed by the governor, subject to confirmation by the senate as
 78 provided in K.S.A. 75-4315b and amendments thereto, and shall
 79 serve ~~at the pleasure of the governor.~~ Not more than three members
 80 of the committee shall be of the same political party.

for a term of four years

until a successor is appointed and qualified, except that of the members first appointed to the committee, one shall be appointed for a term of one year, one shall be appointed for a term of two years, one shall be appointed for a term of three years and two shall be appointed for a term of four years

83 (b) The committee shall review all proposals for Kansas export
84 loan financing guarantees under section 4 and shall approve those
85 proposals that the committee deems to represent reasonable risks
86 and to have a sufficient likelihood of repayment. The committee shall
87 advise the secretary of commerce on matters under this act when
deemed appropriate by the committee.

88 (c) The committee shall organize annually by electing a chair-
89 person and vice-chairperson from among its members. The com-
90 mittee shall meet upon call of the secretary of commerce or the
91 chairperson or upon call of any three of its members. Three members
92 shall constitute a quorum for the transaction of business.

93 (d) Members of the Kansas export loan guarantee review com-
94 mittee attending meetings of the committee, or attending a subcom-
95 mittee meeting thereof authorized by the committee, shall be paid
96 compensation, subsistence allowances, mileage and other expenses
97 as provided in K.S.A. 75-3223 and amendments thereto.

98 Sec. 6. (a) There is hereby established the Kansas export loan
99 guarantee fund in the state treasury. The Kansas export loan guar-
100 antee fund shall be administered by the secretary of commerce. All
101 moneys in the Kansas export loan guarantee fund shall be used to
102 provide guarantees against commercial preexport and postexport
103 credit risks in accordance with this act.

104 (b) All moneys received for Kansas export loan financing guar-
105 antee fees under section 4 shall be remitted to the state treasurer
106 at least monthly and deposited in the state treasury to the credit of
107 the Kansas export loan guarantee fund.

108 (c) The pooled money investment board may invest and reinvest
109 moneys credited to the Kansas export loan guarantee fund in obli-
110 gations of the United States of America or obligations the principal
111 and interest of which are guaranteed by the United States of America
112 or ~~in interest-bearing time deposits in any commercial bank or trust~~
113 ~~company located in Kansas, or, if the board determines that it is~~
114 ~~impossible to deposit such moneys in such time deposits,~~ in repur-
115 chase agreements of less than 30 days' duration with a Kansas bank
116 or with a primary government securities dealer which reports to the
market reports division of the federal reserve bank of New York for

in amounts exceeding \$50,000

interest bearing time deposits in any commercial bank or trust company located in Kansas. Such deposits shall be secured as stipulated in K.S.A. 75-4218. If the board determines that it is impossible to deposit such moneys in such time deposits at a rate equal to or greater than the average yield before taxes received on 91 day United States treasury bills as determined by the federal reserve banks, as fiscal agents of the United States, at its most recent public offering of such bills prior to the inception of such deposit contract, such moneys shall be invested in

118 direct obligations of, or obligations that are insured as to principal
119 and interest by, the United States government or any agency thereof.
120 All moneys received as interest earned by the investment of the
121 moneys credited to the Kansas export loan guarantee fund shall be
122 deposited in the state treasury and credited to the Kansas export
123 loan guarantee fund.

124 Sec. 7. This act shall take effect and be in force from and after
125 its publication in the statute book.

**ENTERPRISE MANAGEMENT INCORPORATED**

February 9, 1989

Senator Dave Kerr, Chairman
Senate Economic Development Committee
State House, Room 120 South
Topeka, KS 66612

By FAX #296-6718

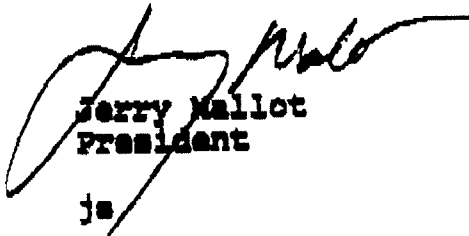
Dear Dave:

Thank you for taking the time to meet with Henry Zigtens and me to discuss a proposed amendment to the existing venture capital bill. Henry has developed a proposed amendment which we believe will be acceptable through the Department of Revenue. We would appreciate your support in attaching this amendment to the bill, assuming Ed Rolfs is supportive.

Paul Peleciano has indicated his willingness to assist in this effort. With our interest in this area and a positive impact on the State of Kansas, we believe this action will be very beneficial.

Thanks again for your assistance and we offer to continue to meet with you and your committee or work behind the scenes in any way which would be helpful.

Sincerely,



Jerry Mallot
President

js

cc: Henry Zigtens

Sen Ed-Nevo
2-16-89
Attachment 2

Arthur Young

1000 Surton Place
Wichita, Kansas 67202
Telephone: (316) 265-9537

February 9, 1989

Mr. Ed Rolfs
Kansas Department of Revenue
Robert B. Docking Office Building
Topeka, Kansas 66612-1588

Dear Mr. Rolfs:

Thank you for your time on Tuesday. We feel that allowing venture capital credit to be carried back will further the purposes of the statute by providing incentives for those venture capitalists who currently have tax losses due to the reinvestment of profits from their successful ventures. To that end we propose that the statute be amended to allow a taxpayer to make an election to carryback the credits and to require that the election be made with a timely filed return for the tax year in which the credit arises. Requiring an election on the part of the taxpayer should limit the number of carrybacks filed and make it easy to administer the use of such credits.

The original objection to allowing the credit to be carried back involved the complicated interaction of the 25% limitation in the original act with the carryback to prior years. The subsequent elimination of the 25% limitation removes that complication and makes the allowance of a carryback a very simple matter.

Although a carryback of the credit may seem inconsistent with the state treatment of net operating losses (NOL's), the issues involved are substantially different. NOL carrybacks are in effect an open ended claim on state revenues but the venture capital credit is a finite, targeted and relatively minor amount. This difference is significant enough to justify any perceived inconsistency.

We agree that the statute should provide for easy taxpayer compliance and easy administration on your part. Our proposal meets those criteria while furthering the intent of the statute.

Arthur Young

February 9 1989
Mr. Ed Rolfs
Page 2

We've taken the liberty of attaching copies of the West Virginia and Montana statutes as well as some proposed amending language which would simplify conformance with the existing statute.

Please feel free to call if I can be of any assistance.

Very truly yours,

ARTHUR YOUNG & COMPANY

Henry G. Zigtma
Director of Taxes

HGZ:jsf
Enclosure

We propose that KSA Section 74-8304 be amended as follows:

KSA Section 74-8304(d) be redenominated as Section 74-8304(e).

KSA Section 74-8304(d) be amended to state the following:

"(d). If the amount of tax credit allowed under this section exceed the taxpayer's tax liability for the taxable year, the taxpayer may elect to have the amount of the credit which exceeds such liability to be carried back to each of the previous three taxable years in a manner consistant with the limitations set out in subsection(a). This election shall be made with a timely filed return for the year of investment in the manner required by the director of taxation."

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CHAPTER 5E. VENTURE CAPITAL AUTHORITY

ARTICLE 1. WEST VIRGINIA CAPITAL COMPANY ACT

W. Va. Code @ 5E-1-8 (1987)

@ 5E-1-8. Tax credits.

(a) The total amount of tax credits authorized for a single qualified company may not exceed two million dollars. Capitalization of the company may be increased pursuant to regulation of the board.

(b) The total credits authorized by the board for all companies may not exceed a total of ten million dollars each fiscal year. The board shall allocate these credits to qualified companies in the order that said companies are qualified.

(c) Any investor, including an individual, partnership or corporation who makes a capital investment in a qualified West Virginia capital company is entitled to a tax credit equal to fifty percent of the investment. The credit allowed by this article shall be taken after all other credits allowed by chapter eleven [@ 11-1-1 et seq.] of this code. It shall be taken against the same taxes and in the same order as set forth in subsections (c) through (i), section five [@ 11-13C-5(c)-(i)], article thirteen-c, chapter eleven of this code. The credit for investments by a partnership or by a corporation electing to be treated as a Subchapter S corporation may be divided pursuant to election of partners or shareholders.

(d) The tax credit allowed under this section is to be credited against the taxpayer's tax liability for the taxable year in which the investment in a qualified West Virginia capital company is made. If the amount of the tax credit exceeds the taxpayer's tax liability for the taxable year, the amount of the credit which exceeds the tax liability may be carried back or may be carried forward in accordance with the provisions of section forty-six (b) of the Internal Revenue Code of 1954 [26 U.S.C. @ 46(b)], as amended.

(e) The tax credit provided for in this section is available only to those taxpayers whose investment in a qualified West Virginia capital company occurs after the first day of July, one thousand nine hundred eighty-six.

HISTORY: (1986, c. 58; 1987, c. 20.)

NOTES:

EFFECT OF AMENDMENT OF 1987. The amendment, effective March 14, 1987, in (b) substituted "are qualified" for "are certified as qualified capital companies"; and in (c) rewrote the second sentence.

EDITOR'S NOTES. -- The bracketed U.S.C. reference was inserted by the editor.

TITLE 90 PLANNING, RESEARCH, AND DEVELOPMENT

CHAPTER 8 MONTANA CAPITAL COMPANY ACT

Part 2 Tax Credits Investments in Capital Company

Mont. Code Anno., @ 90-8-202 (1987)

90-8-202. Designation of qualified Montana capital companies -- tax credit

(1) The board shall designate as qualified Montana capital companies those certified companies that have been privately capitalized at a minimum level of \$200,000. A certified company seeking designation as a qualified Montana capital company must make written application to the board on forms provided by the board. The application must contain the information required by 90-8-204 and such other information as the board requires.

(2) (a) The total amount of tax credits authorized for a single qualified company may not exceed \$1,500,000. In the event the capitalization of the company is later increased, the company may apply for authorization of additional tax credits within the foregoing limitation.

(b) The total credits authorized for all companies may not exceed a total of \$1 million prior to June 30, 1985. The total credits authorized for all companies between July 1, 1985, and June 30, 1987, may not exceed \$1 million plus any portion of the \$1 million available for authorization before June 30, 1985, that is allocated to qualified companies. The total credits authorized for all companies between July 1, 1987, and June 30, 1989, may not exceed \$3 million plus any portion of the credits available for authorization before June 30, 1987, that is allocated to qualified companies. The total credits authorized for all companies between July 1, 1989, and June 30, 1991, may not exceed \$3 million plus any portion of the credits available for authorization before June 30, 1989, that is allocated to qualified companies.

(3) The credits shall be allocated to qualified companies in the order that completed applications for designation as qualified capital companies are received by the board, and the board shall certify to each such company its appropriate allocation.

(4) Investors in a qualified Montana capital company are entitled to the tax credits provided for in subsection (5). Funds invested in a certified company prior to designation as a qualified Montana capital company may, at the discretion of the investor, be placed in an escrow account in a Montana financial institution pending designation of the company as a qualified Montana capital company.

(5) Subject to the provisions of subsection (2), an individual, small business corporation, partnership, or corporate taxpayer who makes a capital investment in a qualified Montana capital company is entitled to a tax credit equal to 50% of the investment, up to a maximum credit of \$150,000 per taxpayer. The credit may be taken against the tax liability imposed on the investor pursuant to Title 15, chapter 30 or 31. The credit for investments by a small business corporation electing to be taxed under 15-31-202 or a partnership may

be cleared by the small business corporation shareholders or the partners.

(6) The tax credit allowed under subsection (5) is to be credited against the taxpayer's income tax liability for the taxable year in which the investment in a qualified Montana capital company is made. If the amount of the tax credit exceeds the taxpayer's tax liability for the taxable year, the amount of the credit which exceeds the tax liability may be carried back or carried forward in accordance with the provisions of section 46(b) of the Internal Revenue Code, as amended.

(7) The tax credit provided for in this section is available only to those taxpayers who invest in a qualified Montana capital company within 4 years of July 1, 1987.

HISTORY: En. Sec. 6, Ch. 554, L. 1983; amd. Sec. 18, Ch. 554, L. 1983; amd. Sec. 3, Ch. 583, L. 1987.

CODE-NOTES:

Compiler's Comments

1987 Amendment: In (2)(a), at end of first sentence, increased "\$375,000" to "\$1,500,000"; in (2)(b) inserted third and fourth sentences limiting credits to \$3 million; in (5), near end of first sentence, increased "25%" to "50%" and "\$25,000" to "\$150,000"; at end of (6), after "Internal Revenue Code", deleted "of 1954"; and at end of (7) changed investment period from "within 5 years of April 18, 1983" to "within 4 years of July 1, 1987".