

Approved 2-20-90  
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 15, 1990 in room 123-S of the Capitol.

All members were present except:

Senator Steineger

Committee staff present:

Bill Edds, Revisor of Statutes' Office  
Lynne Holt, Kansas Legislative Research Dept.  
Sue Pettet, Secretary to the Committee

Conferees appearing before the committee:

Chairman Kerr called the meeting to order. He stated that the meeting was going to be continued discussion on S.B. 438 and S.B. 437. Senate Bill 438 amends laws on venture capital companies to accelerate review time table for continued certification of companies and to prohibit venture capitalists from owning an equity interest in or a debt instrument of a business in which the venture capital company has invested funds.

Attachment #1 is an amendment requested by Charles Becker of Campbell & Becker. The suggested language change for Section 1(g) is "A certified Kansas venture capital company shall not own an equity interest in or a debt instrument of a business in which an investor in the certified venture capital company already owns a controlling interest."

Attachment #2 lists changes in language requested by Stan Gegan, Pres. Carmen Venture, Inc. It refers to the definition of "related persons". Language in its present form restricts the normal flow of venture funding, possibly creating problems for emerging companies seeking financing.

After extensive committee discussion, Chairman Kerr stated that the bill would be held for one week. If any committee member wanted to draft language for amendment, it would be considered in committee.

Senate Bill 437

Chairman Kerr explained that Senator Vidricksen was requesting amendments on S.B. 437. (Att. 3) Senator Vidricksen stated that the Universities are the strongest opposition to the bill. He said he felt that a review board would have the best interest of education in mind, and the Universities would not have that much to fear. An amendment in Section II would change the board to five members, with the Chairman being appointed by the Governor. Line 39, (Section 6) would be the most controversial amendment to the bill.

Chairman Kerr explained that the bill would be further discussed with possible action on Tuesday, February 20.

Chairman Kerr explained that there was a bill introduction request regarding an "information network of Kansas." It was requested by several groups, including The Kansas Bar Assoc. The bill would allow for a board and would help set guidelines for access for state information. It would not require state funding. Senator Winter made a motion to introduce the bill. Senator Feleciano seconded. Motion carried.

Secretary Harland Priddle requested bill introduction to address the allocation process for 1990 on certian private activity, tax exempt bonds. Senator Feleciano made a motion to introduce the bill. Senator Salisbury seconded. Motion carried. Meeting adjourned.

Date 2/15/90

VISITOR SHEET

(Please sign)

Name/Company	Name/Company
<i>Sean Moore</i>	<i>Inter</i>
BEU BRADLEY	KS Assoc of Counties
<del>BRAD MEARS / KDOC</del>	
Terry Decker	Ks. Bd. of Ag.
<i>Jim Cowg</i>	<i>University of Ks</i>
<del>Jim Cowg</del>	<i>Kansas Tech -</i>
TED D. AYRES	KANSAS BOARD OF REGENTS
Sue PETERSON	KANSAS STATE UNIVERSITY
<i>BUD GRANT</i>	<i>KCU</i>
Roland Smith	WIBA
Jim Yonally	NFIB/Kansas

# SENATE BILL No. 438

By Joint Committee on Economic Development

1-8

AN ACT relating to economic development; concerning venture capital companies; amending K.S.A. 1989 Supp. 74-8307 and repealing the existing ~~section~~ 74-8304 and ~~sections~~

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

Section 1. K.S.A. 1989 Supp. 74-8307 is hereby amended to read as follows: 74-8307. (a) To continue in certification, a Kansas venture capital company must:

(1) Invest at least 30% of its original capitalization at the end of the initial ~~five~~ *three* years in such a manner as to acquire equity in the ventures in which the investments are made;

(2) have invested at least 50% in the same manner at the end of ~~seven~~ *five* years; and

(3) have invested at least 75% in the same manner at the end of ~~nine~~ *seven* years.

(b) Invest at least 60% of the total investment of the Kansas venture capital company, except for Kansas Venture Capital, Inc. must be in Kansas businesses in which the funds so invested were to be used solely for the purpose of enhancing their productive capacity within the state, or to add value to goods or services produced or processed within the state.

(c) Funds invested by Kansas Venture Capital, Inc. shall be invested at 100% in Kansas businesses or in Kansas venture capital companies which invest 100% of the funds invested in such companies by Kansas Venture Capital, Inc. in Kansas businesses in which the funds so invested were to be used solely for the purpose of enhancing their productive capacity within the state, or to add value to goods or services produced or processed within the state.

(d) No more than 20% of the assets of a Kansas venture capital company may be invested in the equity of a single business at any one time, unless the Kansas venture capital company can reasonably demonstrate that a greater percentage in a single company at any one time is the result of losses suffered by the Kansas venture capital company in other investments.

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Att. 1

1 (e) The use of invested funds by a Kansas business for oil and  
 2 gas exploration and development, for real estate development or  
 3 appreciation, for banking or lending operations, or service or retail  
 4 are not acceptable investments to qualify for the tax credit provided  
 5 in this act. Any investments by Kansas venture capital companies  
 6 in any of these sectors shall not be counted as equity investments  
 7 for the purpose of continuing certification under this section.

8 (f) Documents and other materials submitted by Kansas venture  
 9 capital companies or by Kansas businesses for purposes of the con-  
 10 tinuance and certification shall not be public records if such records  
 11 are determined by the secretary to be trade or business secrets  
 12 under the uniform trade secrets act (K.S.A. 60-3320 to 60-3330),  
 13 inclusive, and amendments thereto, and shall be maintained in a  
 14 secured environment by the secretary.

15 (g) ~~Investors in a Kansas venture capital company shall not own~~  
 16 ~~an equity interest in or a debt instrument of a business in which~~  
 17 ~~the venture capital company has invested funds.~~

18 Sec. ~~2~~ K.S.A. 1989 Supp. 74-8307 ~~is~~ hereby repealed.  
 19 Sec. ~~3~~ This act shall take effect and be in force from and after  
 20 its publication in the statute book.

acquire

an investor in such

owns a controlling interest. For the purpose  
 of this subsection, "controlling interest"  
 means:

(1) Ownership, directly or indirectly, of  
 stock possessing at least 50% of the total  
 combined voting power of all classes of stock  
 entitled to vote, with respect to a  
 corporation; and

(2) ownership, directly or indirectly, of at  
 least 50% of a capital or profits interest with  
 respect to a partnership or association

Insert Sec. 2.

3

74-8304 and

are

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1-2

Sec. 2. K.S.A. 1989 Supp. 74-8304 is hereby amended to read as follows: 74-8304. (a) There shall be allowed as a credit against the tax imposed by the Kansas income tax act on the Kansas taxable income of a taxpayer and against the tax imposed by K.S.A. 40-252 or 40-2801, and amendments thereto, on insurance companies for a cash investment in a certified Kansas venture capital company in an amount equal to 25% of such taxpayer's cash investment in any such company in the taxable year in which such investment is made and the taxable years following such taxable year until the total amount of the credit is used. The amount by which that portion of the credit allowed by this section exceeds the taxpayer's liability in any one taxable year may be carried forward until the total amount of the credit is used. If the taxpayer is a corporation having an election in effect under subchapter S of the federal internal revenue code or a partnership, the credit provided by this section shall be claimed by the shareholders of such corporation or the partners of such partnership in the same manner as such shareholders or partners account for their proportionate shares of the income or loss of the corporation or partnership.

(b) The secretary of revenue shall allow credits that are attributable to not more than \$50,000,000 of cash investments in certified Kansas venture capital companies and certified local seed capital pools allowable pursuant to K.S.A. 1988 Supp. 74-8401 and amendments thereto, which shall include not more than \$10,000,000 for Kansas Venture Capital, Inc. The credits shall be allocated by the secretary for cash investments in certified Kansas venture capital companies in the order that completed applications for designation as Kansas venture capital companies are received by the secretary. Any certified Kansas venture capital company may apply to the secretary at any time for additional allocation of such credit based upon then committed cash investments, but priority as to such additional allocation shall be determined at the time of such subsequent application. Notwithstanding the provisions of subsection (c), investors in Kansas venture capital companies established after July 1, 1984, which otherwise meet the requirements specified in this act, shall be, upon certification of the Kansas venture capital company, entitled to the tax credit provided in subsection (a) in the calendar year in which the investment was made.

(c) No taxpayer shall claim a credit under this section for cash investment in Kansas Venture Capital, Inc. No Kansas venture capital company shall qualify for the tax credit allowed by Chapter 332 of the 1986 Session Laws of Kansas for investment in stock of Kansas Venture Capital, Inc.

(d) The provisions of this section, and amendments thereto, shall be applicable to cash investments made in any taxable year commencing after December 31, 1985, and prior to January 1, 1993.



Re-designate current 74-8307 (f) to 74-8307 (h)

74-8307 (f) Investments by Kansas venture capital companies in related persons shall not be counted as equity investments for the purpose of continuing certification under this sub-section.

74-8303 (g) "Related persons" are:

- (1) An individual and a corporation more than 50 percent in value of the outstanding stock of which is owned, directly, by or for such individual;
- (2) Two corporations which are members of the same controlled group (as defined in IRC 267(f));
- (3) A fiduciary of a trust and a corporation more than 50 percent in value of the outstanding stock of which is owned, directly or indirectly, by or for the trust or by or for a person who is a grantor of the trust;
- (4) A corporation and a partnership if the same persons own —
  - (A) more than 50 percent in value of the outstanding stock of the corporation, and
  - (B) more than 50 percent of the capital interest, or the profits interest, in the partnership;
- (5) An S corporation and another S corporation if the same persons own more than 50 percent in value of the outstanding stock of each corporation; or
- (6) An S corporation and a C corporation, if the same persons own more than 50 percent in value of the outstanding stock of each corporation.

Ownership for purposes of this definition shall not include equity investments made by a Kansas venture capital company if such investment was a qualified equity investment at the time it was originally made.

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# SENATE BILL No. 437

By Joint Committee on Economic Development

1-8

10 AN ACT establishing the Kansas private enterprise review board;  
11 duties.

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

13 Section 1. As used in this act:

14 (a) "Private enterprise" means an individual, firm, partnership,  
15 joint venture, corporation, association or any other legal entity en-  
16 gaging in the manufacturing, processing, sale, offering for sale, rental,  
17 leasing, delivery, dispensing, distributing or advertising of goods or  
18 services for profit;

19 (b) "state agency" means a department, office, commission, in-  
20 stitution, board or other agency of state government. Such term shall  
21 include institutions of postsecondary education;

22 (c) "board" means Kansas private enterprise review board.

and governmental institutions or agencies  
which are subject to state agency oversight.

23 Sec. 2. (a) There is hereby established the Kansas private en-  
24 terprise review board which is composed of ~~(1) the secretary of~~  
25 ~~administration and (2) two~~ representatives of the general public, who  
26 are engaged in private enterprise, appointed by the governor.

New Section 2. It is the policy of this  
state that no state agency shall engage in  
any activity which is in competition with  
private enterprise unless the agency  
demonstrates an overriding or compelling  
public interest served by the provision of  
the service.

27 (b) The members appointed under this section by the governor  
28 shall serve at the pleasure of the governor. Not more than two  
29 members of the board shall be members of the same political party.

five

30 (c) The chairperson of the board shall be designated by the gov-  
31 ernor. The board shall meet at least once each ~~calendar quarter~~ and  
32 such other times as may be required on call of the chairperson  
33 any two members thereof.

at least two of whom

34 (d) A quorum of the Kansas private enterprise review board shall  
35 ~~two~~. All actions of the board shall be taken by a majority of all  
36 the members of the board.

year

37 (e) Members of the Kansas private enterprise review board at-  
38 tending meetings of such board, or attending a subcommittee meet-  
39 ing thereof authorized by such board, shall be paid compensation,  
40 subsistence allowances, mileage and other expenses as provided in  
41 K.S.A. 75-3223 and amendments thereto.

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Att. 3

Sec. 2. Clerical assistance for the Kansas private enterprise review board shall be provided by the secretary of ~~administration.~~

*Committed*

1 purchasing and related management functions of the Kansas private  
2 enterprise review board shall be administered by the secretary of  
3 administration under the direction and supervision of the chairperson  
4 of the board. All vouchers for expenditures and all payrolls of the  
5 Kansas private enterprise review board shall be approved by the  
6 chairperson of the board or by a person or persons designated by  
7 the chairperson.

8 3 Sec. 4 (a) The Kansas private enterprise review board shall:

9 (1) Receive written complaints ~~from private enterprise~~ that an  
10 activity of a state agency is in direct competition with ~~such~~ private  
11 enterprise;

5  
[ ] proposed or current

12 (2) transmit complaints received under paragraph (1) of this sub-  
13 section to the state agency alleged to be in competition with such  
14 private enterprise;

15 (3) hold public hearings on complaints and determine whether  
16 the state agency is in competition with such private enterprise;

17 (4) within 30 days after receiving the state agency's response to  
18 the complaint, issue a written report of its findings to the complaint;

19 (5) transmit a ~~quarterly~~ report to the legislature and the governor,  
20 including the findings, conclusions and recommendations of com-  
21 plaints reviewed by the board during the previous ~~quarter~~.

[ ] an annual  
[ ] year

22 (b) The board, when reviewing the complaint in subsection (a),  
23 shall consider the following:

24 (1) will cessation of the activity by the state agency create a bona  
25 fide emergency;

26 (2) will cessation of the activity cause substantial harm or loss of  
27 substantial invested funds to the state;

28 (3) is there an overriding or compelling state interest;

29 (4) is such activity specifically authorized by law; or

30 (5) will cessation of the activity cause ~~substantial~~ harm to the  
31 legitimate educational needs or activities of the state.

*strike*

32 (c) The state agency shall respond to the board, in writing, within  
33 30 days after receipt of a complaint transmitted under paragraph (2)  
34 of subsection (a) and shall either deny or concur with the complaint  
35 and indicate any necessary and contemplated remedial measures.

36 (d) The board shall adopt by rules and regulations a procedure  
37 for an expedited hearing process if it is determined the alleged  
38 competition may cause severe financial hardship on the private en-  
39 terprise filing the complaint.

Sec. 6. In the event that the board deter-  
mines that the activity or program is  
inappropriately in competition with private  
enterprise, and if such program is not spe-  
cifically authorized by statute, then the  
state agency shall discontinue such program  
or activity until such legislative approval  
has been obtained.

40 Sec. 5 This act shall take effect and be in force from and after  
41 its publication in the statute book.

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