

Approved 3-27-90
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 22, 1990 in room 123-S of the Capitol.

All members were present except:

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:

Ernie Mosher, Ks. League of Municipalities
Pat Baker, Ks. Assoc. of School Boards
Bud Grant, KCCI
Bill Martin, Ks. Industrial Developers Assoc.

Chairman Kerr called the meeting to order. He stated that the purpose of the meeting was to have a hearing on S.B. 440.

Ernie Mosher, Ks. League of Municipalities testified. (Att. 1) He stated that he generally supported S.B. 440. He also wants local flexibility in the granting of property tax exemptions for economic development purposes, under the 1986 constitutional amendment. He stated that he had seven amendments to recommend, (Att. 1).

During committee discussion, Senator Francisco stated that he had a concern that the cities who grant the exemptions may not be affected by the exemption, but that other cities and school districts are affected.

Pat Baker, Ks. Assoc. of School Boards testified. (Att. 2) She stated that she felt the intent of the Constitutional Amendment passed in 1986 was to encourage new economic development in the state and not to find ways to abate taxes for existing businesses. She also had suggestions for amendments listed in Att. 2. Most particularly, she felt school districts should have veto authority over abatements which would offset their tax law.

Bud Grant, KCCI testified. (Att. 3) He stated that he opposed S.B. 440. The bill sets forth requirements and procedures that many small communities in Kansas would find impossible to comply with unless an outside advisor is hired. He said he felt it would discourage existing Kansas firms to expand and create jobs. It would also prohibit a Kansas firm from utilizing the incentives available to another firm moving in from out of state.

Bill Martin testified. (Att. 4). He stated that he opposed S.B. 440. He stated that they opposed:

1. Requiring public hearings with seven day published notices.
2. Forbidding cities and counties from exempting property that has been on the tax roles in Ks. They don't feel "pirating" has been a problem.
3. Requiring cities and counties to file detailed annual reports.

Attachment 5 is testimony submitted by Dr. Charles Krider, Professor, University of Ks. Dr. Krider was not present.

CONTINUATION SHEET

MINUTES OF THE Senate COMMITTEE ON Economic Development,
room 123-S Statehouse, at 8:00 a.m./~~pm~~ on February 22, 1990

COMMITTEE DISCUSSION OF S.B. 438.

Attachment 6 is a balloon of amendments on S.B. 438.

Chairman Kerr explained that the committee had previously discussed S.B. 438 at length and there were some proposals that intended to clarify paragraph (g). (Att. 6). It was stated that subsection (g) clarifies the restoration of ownership of a venture capital company. The word "majority" is to replace "controlling" in subsection (g) also.

Boone Porter stated that he opposed some parts of the amendment. He did not like the idea of inquiring into people's motives. He felt subsection (h) was totally unworkable and subsection (g) could be used with some changes.

Sam Campbell of Campbell & Becker stated he opposed subsection (h) and that his business would find it very difficult to effectively operate under such a proposal.

Chairman Kerr explained that the committee would further discuss S.B. 438 with possible action on Tuesday, Feb. 27 and also receive written testimony from Mike Rundle of the City Commissioner's Office in Lawrence at that time also.

Meeting adjourned.



An Instrumentality of its Member Cities. 112 West Seventh Street, Topeka, Kansas 66603 913-354-9565 Fax 354-4186

To: Senate Committee on Economic Development
Re: SB 440--Economic Development Tax Exemptions
From: E.A. Mosher, Executive Director
Date: February 22, 1990

On behalf of the League and its member cities, I appear in general support of SB 440. Our convention-adopted "Statement of Municipal Policy" provides as follows:

"We support local flexibility in the granting of property tax exemptions for economic development purposes, under the 1986 constitutional amendment. Cities and counties should adopt policies and criteria governing the granting of economic development exemptions. We oppose any state agency review of the advisability of granting lawful exemptions. Counties should not be empowered to grant exemptions for property within cities, nor within the three mile area of a city except with the approval of that city's governing body."

The Finance and Taxation Committee of the League has reviewed the provisions of SB 440, and is in general support, with some amendments. I would note our support for bills like SB 440 is somewhat of a departure from our traditional home rule advocacy. However, we support retaining the basic authority to grant tax exemptions for economic development purposes, and believe that some procedural restrictions may be appropriate to maintain that basic power.

We have several amendments to suggest.

Amendment No. 1. We would recommend that Section 1 of HB 2185, now in the House Committee on Taxation, be added to SB 440. This section provides as follows:

"No board of county commissioners of any county, pursuant to the provisions of section 13 of article 11 of the Kansas constitution, shall grant any exemption from ad valorem taxation for any property located or to be located within the corporate limits of any city without approval thereof by the governing body of such city."

The purpose of this amendment is to clarify whether a county may unilaterally grant an exemption within a city. We don't think the constitution is clear. We think it should be established by statute. We think counties should not be able to grant an exemption within a city without the approval of the governing body of that city.

Amendment No. 2. In addition to the notice and public hearing requirement found in SB 440, HB 2185 contains a provision requiring the city or county clerk to notify "the governing

body of all taxing districts" which may be affected as to the hearing on the exemption. We don't think it should be necessary to notify every "taxing district". The average county has about 40 taxing districts--many of which could be affected by a change in the county tax base, some by an inconsequential amount. Instead, we would suggest additional language as follows be added at the end of line 29, page 2:

"In addition to such publication notice, the city or county clerk, as the case requires, shall notify the governing body of the county and unified school district within which the property proposed for exemption is located."

Amendment No. 3. Under AGO 86-168, the owner of property exempt for economic development purposes under the constitution must comply with the provisions of K.S.A. 79-210, which requires that the exemption be filed with the state board of tax appeals annually. HB 2185 would add the following to K.S.A. 79-210:

"The provisions of this section shall apply to property exempt pursuant to the provisions of section 13 of article 11 of the Kansas constitution."

The Committee may want to include an amendment to K.S.A. 79-210 within SB 440 in order to clearly specify legislative intent.

Amendment No. 4. This same opinion of the Attorney General, dated December 3, 1986, advised that exemptions granted pursuant to the constitutional amendment should be undertaken procedurally in the same manner as other property exemptions. This procedure is set forth in K.S.A. 79-213, and requires the reporting of certain information, the recommendation of the county appraiser, and approval by the state board of tax appeals. We call to your attention that HB 2185 contains the following language, in reference to K.S.A. 79-213:

"The provisions of this section shall apply to property exempted pursuant to the provisions of section 13 of article 11 of the Kansas constitution."

The Committee may want to include an amendment to K.S.A. 79-213 within SB 440 to clearly specify legislative intent.

Amendment No. 5. We think the language of lines 21 through 25 could be clarified. You may want to change the language to read similar to the following:

(a) Develop and adopt official policies and procedures for the granting of such exceptions including which requires:

(1) A cost-benefit analysis of the exemption be prepared prior to the granting of any such exemption; and

(2) a procedure for monitoring the compliance of a business receiving such an exemption with any conditions established by the governing body for the granting of the exemption.

Amendment No. 6. We raise the question as to whether lines 33 and 34 should be clarified. It is my understanding that even tax exempt property, like state buildings, are "presently listed on the records of any county appraiser". Given our understanding of the intent, you might want to substitute the words "is presently subject to property taxation within the state of Kansas."

Amendment No. 7. Finally, we question the need and value of the reporting requirements in Section 3. If the law requires an annual certification by the state board of tax appeals, we wonder whether the state department of revenue really needs all this "stuff", other than as a convenient source of information for university research projects. In any event, we are confused by some of the wording.

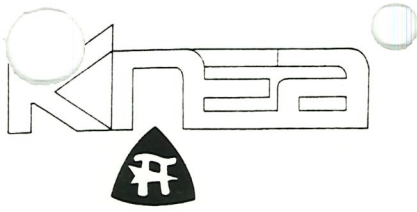
For example, on line 1, page 2, what does "overall structure" mean?

We are also not sure what the words "in individual terms" means, used on line 4.

The words "cost-benefit analysis" is used both in lines 22 on page 1 and on line 5 on page 2. Does "cost" mean the amount of property taxes not paid because of the exemption, less any in-lieu payments? Is the loss of a business that wants to expand a "cost"?

As to subsection (d) on line 7, page 2, we would simply ask whether this is what the Committee really wants.

As you may surmise, we have some questions about all of this annual report business. We wonder what the Department of Revenue is going to do with the information, even if they get it. We are not aware of anyone in the Department that has the capacity to second guess local governing bodies. It seems to us that the better procedure would be to require the annual filing of exemption with the state board of tax appeals, as proposed in Amendment No. 3. above. If need be, you could require that the annual exemption claim filed by the taxpayer include a statement from the appropriate city or county clerk that the business affected is in compliance with all the terms and conditions for which the exemption was granted.



Joint Testimony on S.B. 440
before the
Senate Economic Development Committee

given by
Patricia Baker, Associate Executive Director
Kansas Association of School Boards

for
Kansas Association of School Boards
Kansas-National Education Association
United School Administrators
Unified School District No. 501 (Topeka)
Schools for Quality Education

Thank you Mr. Chairman, members of the committee for the opportunity to appear before you on behalf of the above listed organizations.

We support the provisions of Senate Bill 440. We believe the intent of the Constitutional Amendment passed in 1986 was to encourage new economic development in the state and not to find ways to abate taxes for existing businesses. The provisions of S.B. 440 ensure an orderly, open process for deliberating the abatement of taxes.

Ideally, we would request that S.B. 440 go even further than it does. We would suggest that Sec. 2 also apply to real property. Also, we would recommend that approval for tax exemption under Section 13 of Article 11 be sought from the appropriate school district. A similar provision to the latter is contained in H.B. 2783, currently before the House Committee on Economic Development.

Thank you for your attention and I would be glad to answer any questions.

LEGISLATIVE TESTIMONY

Kansas Chamber of Commerce and Industry

500 Bank IV Tower One Townsite Plaza Topeka, KS 66603-3460 (913) 357-6321



A consolidation of the
Kansas State Chamber
of Commerce,
Associated Industries
of Kansas,
Kansas Retail Council

SB 440

February 22, 1990

KANSAS CHAMBER OF COMMERCE AND INDUSTRY

Testimony Before the

Senate Committee on Economic Development

by

Bud Grant
Vice President

Mr. Chairman and members of the Committee:

My name is Bud Grant, and I am appearing on behalf of the Kansas Chamber of Commerce and Industry, and appreciate the opportunity to share comments about SB 440.

The Kansas Chamber of Commerce and Industry (KCCI) is a statewide organization dedicated to the promotion of economic growth and job creation within Kansas, and to the protection and support of the private competitive enterprise system.

KCCI is comprised of more than 3,000 businesses which includes 200 local and regional chambers of commerce and trade organizations which represent over 161,000 business men and women. The organization represents both large and small employers in Kansas, with 55% of KCCI's members having less than 25 employees, and 86% having less than 100 employees. KCCI receives no government funding.

The KCCI Board of Directors establishes policies through the work of hundreds of the organization's members who make up its various committees. These policies are the guiding principles of the organization and translate into views such as those expressed here.

With the passage of the industrial revenue bond law in Kansas in 1961, the Kansas Legislature granted authority to local communities to grant 10-year property tax

exemptions for land, facilities, and property. With few exceptions, this system worked well for Kansas and resulted in the creation of thousands of jobs.

When it became obvious in the mid-80's that the federal government was going to discontinue the federal tax exemption associated with the issuance of the bonds, the Kansas Legislature again stepped forward, recognizing the importance of the property tax exemption, and authorized a constitutional amendment which was overwhelmingly approved by Kansans in 1986.

With this brief history, we can see that the property tax exemptions now available to a restricted few classes of business, have actually been available since 1961. I am not now, nor have I ever been, aware of any problem of "pirating" of businesses from one community to another.

I could not find the testimony from the summer's interim study recommending that the concepts contained in SB 440 be enacted. However, I think it alluded to the "possibility" that the potential for pirating exists. That potential has existed since 1961, yet where are the problems? Is SB 440 an unnecessary and complicated fix to a non-existent problem? Our information would lead us to believe that it is.

As to the bill itself, it sets forth requirements and procedures that many small communities in Kansas would find impossible to comply with unless an outside advisor is hired. Section two calls for several questionable and complicated items to be provided, and then leaves the issue open-ended by allowing the secretary of revenue to call for such other information as deemed necessary.

Finally, and probably most importantly, this is an issue that must be decided at the local level. While this bill does not change that, it requires the time and expense to jump through hoops to reach a conclusion that is going to be reached anyhow. No Kansas community is sneaking into another in the middle of the night with a brown paper bag full of property tax exemptions. There may be a dozen reasons a firm would want to move from

one Kansas community to another: labor availability; utilities; market; transportation, etc. This bill would prohibit that Kansas firm from utilizing the incentives available to another firm moving in from out-of-state. This is not the way to encourage existing Kansas firms to expand and create jobs.

I urge you to support SB 440 adversely, and would be pleased to attempt to answer any questions.

Remarks before the
SENATE ECONOMIC DEVELOPMENT COMMITTEE
Regarding SB 440

February 22, 1990

by
Bill Martin
Kansas Industrial Developers Association

The Kansas Industrial Developers Association (KIDA) is made up of over 100 economic development professionals serving Kansas. While we share the Legislature's interest in the appropriate use of property tax abatements, KIDA cannot support SB 440.

KIDA believes that communities should consider the costs and benefits of tax abatements, have policies and procedures to guide their use and insure, to the greatest extent possible, that companies granted abatements perform as they have proposed. KIDA, however, does not agree that Kansas communities should be required to go through this process.

Specifically, KIDA disagrees with provisions:

1. Requiring public hearings with seven day published notice. In order to grant an abatement, a city must pass an ordinance, which insures ample opportunity to discuss the proposed abatement. To require additional public discussion merely slows the process and discourages some potential job creating firms.
2. Forbidding cities and counties from exempting property that has been on the tax roles in Kansas. KIDA does not believe "pirating" of firms from one Kansas community to another is or has been a problem.
3. Requiring cities and counties to file detailed annual reports. These reporting requirements would add significantly to the work load of local officials. Some of the information should be readily available from the Board of Tax Appeals, which must order the approval of each abatement granted in Kansas.

TESTIMONY ON SB 440
PROPERTY TAX ABATEMENT POLICY

presented to
The Senate Economic Development Committee
February 22, 1990

presented by
Dr. Charles Krider
Professor, School of Business
and
Director of Business Research
Institute for Public Policy and Business Research
University of Kansas

Introduction

I appreciate the opportunity to provide the Committee with testimony in support of SB 440. I recognize that property tax abatements can be of benefit to communities and the entire state, if properly constructed and implemented. However, tax abatements can also have harmful side-effects if not appropriately structured. Our research at the Institute for Public Policy and Business Research indicates that firms generally rate tax abatements as having less importance than other factors in their decision to locate in a particular area. Negative side-effects of improperly used property tax abatements can include:

- 1) increasing the local tax rate;
- 2) shifting the tax burden from new businesses to existing businesses and households;
- 3) driving out existing businesses who are ineligible in the home community, but eligible in another;
- 4) providing a tax advantage to a firm, which would have located in the community anyway regardless of the abatement, without benefit to the community;
- 5) "raiding" between Kansas communities; and
- 6) "whipsawing" of communities by firms to gain undue benefits relative to the return to the community.

Need for State-wide Standards

The Constitutional amendment on tax abatements allows the Kansas legislature to place limitations or prohibitions on the granting of abatements by all cities and counties. As noted above, a real need exists for such restrictions. However, many of these

should be imposed voluntarily, at the individual community level. Each community possesses better information about its own interests than the state government, and even if a few communities make mistakes, it should be their right to do so. Other communities can learn and profit from these mistakes.

However, this argument does not apply in cases where actions in one community have negative effects on other Kansas communities, or on the state as a whole. In those cases, state-wide standards are appropriate. In particular, "raiding" of industry between Kansas communities leads to a needless waste of resources and does nothing for the development of Kansas as a whole.

Support of SB 440

The State of Kansas should legislate certain minimum requirements that assist Kansas cities and communities in exercising their option to abate property tax.

- 1) Communities should develop and adopt official policies and procedures for granting exemptions. These should include a cost-benefit analysis, a procedure for monitoring the compliance of an exempted business, and a public hearing.
- 2) Abatements should usually not be permitted in intrastate relocation. If a community uses a tax abatement to "pirate" a firm from another Kansas community this creates a loss to the state as a whole. Exceptions should be permitted only if the governing body makes a factual determination that such an exemption is required to

retain a company in Kansas. An abatement should be granted to a firm from another Kansas community only if that company would otherwise leave Kansas. It is unclear whether or not Section 2 accomplishes this goal.

- 3) Communities granting tax abatements should be required to file an annual report with the Kansas Department of Revenue.
- 4) Abatements should continue to be granted only to firms engaged in basic industry.

Conclusion

Cities and communities should be able to set their own tax abatement policy without strict state regulation and interference. However, minimum guidelines should be adopted in order to curb potential intrastate competition, tax base erosion, and improper abatement use. SB 440 would establish the necessary local restraint and cost effective use of property tax abatements.

SENATE BILL No. 438

By Joint Committee on Economic Development

1-8

10 AN ACT relating to economic development; concerning venture cap-
11 ital companies; amending K.S.A. 1989 Supp. 74-8307 and repealing
12 the existing section 74-8304 and
13 sections

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

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

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

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

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

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

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

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

6-2

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~~.

acquire

an investor in such

already owns a majority interest

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.

(h) The secretary shall review a written summary of each proposed investment by a Kansas venture capital company prior to the investment being made and advise the company whether such investment would qualify for continuing certification of the company. The secretary shall prescribe the format of that summary.

Insert Sec. 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.