

Approved: April 3, 1997
Date

MINUTES OF THE HOUSE COMMITTEE ON ECONOMIC DEVELOPMENT.

The meeting was called to order by Chairman Bill Mason at 3:30 p.m. on March 18, 1997 in Room 423-S of the Capitol.

All members were present except: Barbara Allen (Excused)
Ethel Peterson (Excused)

Committee staff present: Lynne Holt, Legislative Research Department
Renae Jefferies, Revisor of Statutes
Beverly Renner, Committee Secretary

Conferees appearing before the committee: Ellyn Sipp, Principal Auditor, Legislative Post Audit
John Rolfe, Deputy Secretary, Department of Commerce & Housing
Rich Bendis, President, Kansas Technology Enterprise Corporation
Senator Lana Oleen, written testimony

Others attending: See attached list

Chairman Mason opened the hearing on SB 18 - an act concerning financial disclosures by state employees engaged in economic development activities.

Lynne Holt, Legislative Research Department, explained the bill. This bill was recommended by the Joint Committee on Economic Development as a result of a report by Legislative Post Audit, "Reviewing the Compensation of Executives of the State's Economic Development Agencies". It requires officers and employees of the Department of Commerce and Housing, Kansas, Inc., the Kansas Technology Enterprise Corporation (KTEC) and unclassified faculty and staff who are associated with the Centers of Excellence in the Regents' Institutions or whose research endeavors are supported by funds committed to those centers, to file a statement of substantial interest with the Commission. There is no fiscal impact.

Ellyn Sipp, Principal Auditor, Legislative Post Audit appeared to talk about **SB 18 (Attachment 1)**. This bill would clarify that officers, employees, and board members of the State's economic development agencies-including KTEC, Kansas, Inc., and Regents' employees involved in economic development activities-are required to file the State's financial disclosure forms. Also, it prohibits certain activities of officers, employees, or board members of Kansas, Inc., KTEC, and the Department of Commerce and Housing relating to businesses in which those individuals or members of their families are employed or in which they have financial interests.

Deputy Secretary John Rolfe, Kansas Department of Commerce and Housing (DOCH), spoke in support of **SB 18 (Attachment 2)**. DOCH has a written policy that prohibits employees from involvement in grant awards or other payments to entities in which the employee or his/her family has a direct or indirect financial interest. Division directors review copies of the statements of substantial interest to analyze financial holdings of employees and avoid situations that could pose a potential conflict of interest.

Rich Bendis, President-KTEC, summarized the policy adopted at KTEC in relation to the requirements presented in **SB 18 (Attachment 3)**. The conflict of interest policy is written distributed and explained to all employees. Substantial interest statements are submitted and reviewed. Potential conflicts of interest in KTEC's investment and technical assistance programs are documented and employees, officers and board members are not involved in the making of a contract, grant, loan or equity investment with any person or business in which they or their immediate family is employed or has a financial interest. Disclosures are also made by Commercialization Presidents and the Venture Capital Fund Manager.

Senator Lana Oleen submitted written testimony supporting **SB 18 (Attachment 4)**.

Chairman Mason closed the hearing on SB 18.

The meeting was adjourned at 4:15 p.m.

The next meeting is scheduled for March 19, 1997.

Testimony Before the House Economic Development Committee on SB18--Financial Disclosures by State Employees Engaged in Economic Development Activities

Ellyn Sipp, Principal Auditor, Legislative Division of Post Audit

March 18, 1997

My name is Ellyn Sipp and I'm a principal auditor with the Legislative Division of Post Audit. I'm appearing before your Committee today to talk about Senate Bill 18.

As you may recall, I appeared before this Committee in late January to present the findings and recommendations made in the performance audit entitled: *Reviewing the Compensation of Executives of the State's Economic Development Agencies*. Besides compensation issues, this audit also looked at the provisions in place to deal with conflicts of interest between employees in economic development agencies and the start-up companies they provide money and technical assistance to. The audit was completed last fall and was presented to the Legislative Post Audit Committee and the Joint Committee on Economic Development at that time.

Overall, we found that relationships between economic development employees and the companies they assist were relatively uncommon. However, they were much more common for the 61 "start-up" companies we reviewed. For 13 of those 61 companies, we found that economic development employees either owned stock in the companies, served in a management capacity (mostly on the board of directors), or both, or they or their spouses owned or worked for companies that sought assistance from their agencies. In most cases, the companies involved received technical assistance, not financial aid.

Not all of these relationships represented potential conflicts of interest. However, in some cases, we concluded there was a potential conflict because the employees generally were in positions to decide which companies would receive State moneys or technical assistance. We also found that employees didn't disclose their relationships about half the time; in these cases, the employees worked at the centers of excellence. Proper financial disclosure of such relationships is the only way for employers to know that their employees may have a conflict—real or perceived—and to decide whether to remove the employee from the conflict situation, or take some other action.

It's possible that some center of excellence employees didn't disclose their relationships because of an apparent misunderstanding in the Board of Regents' policies. Although those policies require faculty and full-time unclassified staff to file a financial disclosure form, the language on that form appears to allow the employee to determine whether a substantial interest is in conflict with his or her

university activities. (Some university employees also had to file State statements of substantial interest if they were designated to do so by their employers, but most of the employees at the centers of excellence weren't required to file this State form.)

We also found that State law was unclear about whether employees of K-TEC and Kansas, Inc., were required to file statements of substantial interest with the Commission on Governmental Standards and Conduct.

Our audit made a number of recommendations to address the types of problems we found.

Several recommendations specifically relate to the issues covered by Senate Bill 18. One called for the Commission on Governmental Standards and Conduct to decide whether employees of K-TEC and Kansas, Inc. were subject to the State's financial disclosure requirements. Another recommended that the Board of Regents require all Regents' institutions to designate individuals involved in economic development activities as needing to submit the State's financial disclosure form to the Commission on Governmental Standards and Conduct. A third recommendation provided options for the Legislature to consider in dealing with conflict-of-interest situations for State employees involved in economic development activities. Those options ranged from prohibiting economic development employees from having any interest or any role in the companies their agencies do business with, to requiring full disclosure of such relationships so their employers can "manage" any conflicts of interest, to doing nothing and allowing agencies to develop and follow appropriate policies and procedures in this area.

Following its consideration of this audit and other testimony and discussions, the Joint Committee on Economic Development introduced the bill you have before you today. This bill would clarify that officers, employees, and board members of the State's economic development agencies—including K-TEC, Kansas, Inc., and Regents' employees involved in economic development activities—are required to file the State's financial disclosure forms. This bill also prohibits certain activities of officers, employees, or board members of Kansas, Inc., KTEC, the Department of Commerce and Housing relating to businesses in which those individuals or members of their families are employed or have financial interests in.

I would be happy to try to answer any questions you may have on this topic.

**TESTIMONY BEFORE THE HOUSE ECONOMIC
DEVELOPMENT COMMITTEE
THE KANSAS DEPARTMENT OF COMMERCE & HOUSING
JOHN ROLFE, DEPUTY SECRETARY
MARCH 18, 1997**

Mr. Chairman and Members of the Committee, I am here today to support passage of Senate Bill 18. This bill would expand the requirement to file a statement of substantial interest to all employees, regardless of the nature of their responsibilities. It also prohibits employees from being involved in grant awards or other payments to entities in which the employee or his/her family has a direct or indirect financial interest.

As a Cabinet agency, designated employees of our agency have always been subject to the requirements for filing statements of substantial interest. This means that employees who hold major policy-making positions, who are responsible for contracting or procurement, or who are responsible for awarding grants must file these statements. In addition, we have a written policy (attached) that prohibits employees from involvement in grant awards or other payments to entities in which the employee or his/her family has a direct or indirect financial interest. Our Personnel Manager has been instructed to provide division directors with copies of the statements of substantial interest filed by their respective employees. This allows the division directors to review financial holdings of employees and to avoid situations that could pose a potential conflict of interest.

We believe our policies and the current version of Senate Bill 18 address the concerns raised in the Post Audit Report and in the report of the Joint Committee on Economic Development.

I would be glad to answer questions.

KANSAS DEPARTMENT OF COMMERCE & HOUSING
CONFLICT OF INTEREST AND DISCLOSURE CERTIFICATION

It is the policy of the Department of Commerce & Housing not to tolerate impropriety or the appearance of impropriety. Associates providing assistance to business prospects, local governments, or other economic development organizations and individuals are expected to avoid unethical behavior.

Associates are prohibited from:

- ▶ Charging any fees or receiving any compensation from any person or entity for assistance that is a part of their KDOC&H responsibility; or
- ▶ Recommending the purchase of goods, services, or property in which they have direct or indirect financial interest.

Associates are required to notify their Division Director in writing if they are:

- ▶ Participating in any aspect of a review for the granting of funds to any entity in which they are shareholders or in which a family member is a shareholder, or has a financial interest. Family member means persons related by virtue of blood (i.e., grandparents, parents, brothers, sisters, aunts, uncles, cousins and children), marriage, or adoption; or
- ▶ Aware of any activity of the Department that will directly or indirectly financially benefit them.

Associates are responsible for recognizing the potential for conflict of interest. When the potential for conflict is identified or if there are doubts as to whether there is a conflict, associates must notify their Division Director with all relevant information. The Division Director shall consult with the Secretary or the Secretary's designee to determine whether a conflict exists. After such consultation, associates will be notified of the Department's ruling regarding the conflict. In evaluating whether a conflict exists, the Secretary or the Secretary's designee may consult with other governmental agencies.

Failure to comply with this policy may result in disciplinary action, including termination. This policy supplements and is in addition to existing ethics statutes and regulations.

Affirmation of Policy

As an associate of the Department of Commerce & Housing, I affirm that I have read and understand the meaning of the Conflict of Interest and Disclosure Certification. I am aware that I must abide by the provisions of this policy and that violation of this policy may result in disciplinary action as stated above.

Name of Associate: _____

Associate's Signature: _____ Date _____

KTEC CONFLICT OF INTEREST POLICIES

<u>Conflict of Interest Issue</u>	<u>Legislative Post Audit Recommendation</u>	<u>Senate Bill 18</u>	<u>KTEC Status</u>
Written conflict of interest policy.	KTEC should develop written conflict of interest policies and ensure that they are understood by employees.	Written policy is not specifically addressed.	A conflict of interest policy has been written, distributed and explained to employees. A copy of this policy is attached.
Submittal and review of Statements of Substantial Interests.	KTEC should review the Statements of Substantial Interests of their employees and board members prior to their submittal to the Secretary of State.	Officers and employees of KTEC shall file written Statements of Substantial Interests, as provided in K.S.A. 46-248 to 46-252, inclusive.	As of January 1, 1997, all KTEC employees have completed a Statement of Substantial Interests. Every form has been reviewed by the KTEC President prior to its submittal to the Secretary of State. Board members and some employees have always been required to complete Statements of Substantial Interests, which are now also reviewed by the KTEC President.
Management of potential conflicts of interest in KTEC's investment and technical assistance programs.	KTEC should include a written statement that indicates a review was made for conflict of interest and the results of that review as part of the documentation process for each investment or technical assistance made.	KTEC employees, officers and board members shall not be involved in the making of a contract, grant, loan or equity investment with any person or business in which they or their immediate family is employed or has a financial interest.	The KTEC conflict of interest policy addresses this portion of Senate Bill 18 as it relates to KTEC employees. KTEC has developed procedures for reviewing technical assistance and investment arrangements for conflict or potential conflicts of interest.
Disclosures made by Commercialization Presidents and Venture Capital Fund Manager.	Through its contracts with the commercialization corporations and the Venture Capital Fund Manager, KTEC should require the types of limitations, disclosures or prohibitions it thinks are necessary to ensure that potential conflict of interest situations are known and managed.	Not addressed in Senate Bill 18.	KTEC is addressing this issue through developing appropriate language for the Commercialization Center and Venture Capital Fund contracts and by raising related issues with the conflict of interest committee.

Additional KTEC Action: KTEC has established a Conflict of Interest Committee of the Board of Directors to address conflict of interest issues. The Committee will review and make recommendations for action on any conflicts, potential conflicts or perceived conflicts that are identified. The Conflict of Interest Committee consists of Tracy Taylor, KTEC Board Chair; Kurt Saylor, KTEC Board Vice Chair; Howard Mossberg, the University of Kansas and Representative Bill Mason, KTEC Board members.



KTEC CONFLICT OF INTEREST POLICY

KTEC employees interact with businesses, industries, public and private foundations and other government agencies in order to assure the success of KTEC's mission. Through these contacts, potential conflicts, real or perceived, may occur. Accordingly, KTEC must be prepared to identify, evaluate and manage any conflict that may occur.

It is the policy of KTEC to conduct all business transactions in the discharge of its statutory duties with impartiality, and to ensure that no KTEC employee improperly receives any personal gain in connection therewith. Therefore, all employees are prohibited from directly or indirectly engaging in conduct that creates, or has the appearance of creating, a conflict of interest between the employee, on the one hand, and KTEC, its clients, or suppliers on the other hand.

Generally, a conflict of interest occurs when an individual's personal relationships or interests and their professional obligations to KTEC are such that an independent observer might reasonably question whether considerations of personal benefit determine the individual's official actions or decisions on behalf of KTEC.

A conflict of interest, or the appearance of it, depends on the particular facts and circumstances of a given situation, and not necessarily on the employee's character or motivations. The appearance of a conflict of interest can be as damaging or detrimental as an actual conflict. Thus, individuals are asked to report potential conflicts so that appearances can be separated from reality and the potential conflict can be managed.

Employees may not engage in the following:

*Employees may not make direct financial investments in start-up companies that have received financial assistance from KTEC or any KTEC subsidiary.

*Employees may not charge any fees or receive any compensation from any person or entity that has received assistance from a KTEC program with respect to which the employee has any administrative, operational, or discretionary authority as part of the employee's KTEC job responsibilities. This policy is not meant to prevent employees from being compensated for services performed or duties assumed in matters not related to KTEC business.

*Employees may not recommend or participate in the bidding process (i.e., preparing the request for bids, soliciting of bids, or evaluating bids) for the purchase of goods, services or property in which they or their parent, sibling, spouse, child or adopted child have a direct or indirect financial interest.

*Employees may not prepare or participate in the making of a contract with any person or business in which the employee or employee's immediate family (parent, spouse, sibling, child or adopted child) has a financial interest.

*Employees may not use private or confidential information related to KTEC's business transactions, or received from third parties by the employee in his or her official capacity, for the personal gain of the employee. Additionally, an employee may not disclose such information to third parties except in the proper discharge of the official job responsibilities.

*Employees who are involved in businesses outside of their KTEC employment may not receive assistance for that business from any KTEC program or subsidiary. This does not prevent a business for which a KTEC employee is a director from applying for assistance, provided that neither the employee nor a member of the employee's immediate family receives compensation from the corporation and are not shareholders in the corporation.

Employees are required to notify the KTEC President (or if the employee is the KTEC President, then KTEC's Board Chair) in writing, if they are:

*Knowingly participating in any aspect of the granting of funds to any entity in which they, their spouses, parents, siblings, children or adopted children own equity interests or have other financial interests; or

*Aware of any activity of KTEC that will directly or indirectly financially benefit them or their spouses, parents, siblings, children or adopted children that has not already been disclosed and approved in writing.

Employees are responsible for recognizing the potential for conflict of interest. When the potential for conflict is identified, or if there are doubts whether there is a conflict, employees must notify the KTEC President (or in the case of KTEC's President, the KTEC Board Chair) with all information deemed relevant by the KTEC President or Board Chair or the Conflict of Interest Committee. The Conflict of Interest Committee will determine whether a conflict exists and notify the employee of the ruling regarding the conflict. The Committee may consult with outside resources to receive additional advice in reaching a decision and shall endeavor to promptly resolve the conflict within thirty days.

Failure to comply with this policy may result in disciplinary action, including termination of employment. This policy supplements and is in addition to such applicable ethics regulations that now or may hereinafter exist.

In addition to the above policy, every KTEC employee is required to complete a Statement of Substantial Interest for the Kansas Commission on Governmental Standards and Conduct. These statements will be submitted to the Office of the Secretary of State, as required, with a copy kept at KTEC offices.

This policy is effective immediately.

LANA OLEEN
 SENATOR, 22ND DISTRICT
 GEARY AND RILEY COUNTIES



TOPEKA

LEGISLATIVE HOTLINE
 1-800-432-3924

SENATE CHAMBER

COMMITTEE ASSIGNMENTS
 CHAIR: FEDERAL AND STATE AFFAIRS
 CHAIR: LEGISLATIVE EDUCATIONAL PLANNING
 CHAIR: LEGISLATIVE POST AUDIT
 COMMITTEE MEMBER: EDUCATION
 JUDICIARY
 CONTRACT AUDIT
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 EDUCATION COMMISSION

**TESTIMONY BEFORE THE
 HOUSE ECONOMIC DEVELOPMENT COMMITTEE
 ON SENATE BILL 18**

Senator Lana Oleen, Vice-Chair
 Legislative Post Audit Committee
 March 18, 1997, 3:30 p.m., Room 423-S

Mister Chairman and members of the Committee, thank you for giving me the opportunity to address Senate Bill 18 with you. On behalf of the Legislative Post Audit Committee, I am in support of this bill.

This legislation addresses recommendations made in Legislative Post Audit's performance audit report, *Reviewing the Compensation of Executives of the State's Economic Development Agencies*. Among other reasons, the Post Audit Committee approved this audit to see if there were adequate safeguards to prevent conflicts of interest for State employees who hand out economic development moneys and other assistance. Some of the audit recommendations were addressed to the Joint Committee on Economic Development, which introduced this bill.

Legislative Post Audit identified a number of relationships between economic development employees and the companies they assist—including owning stocks in those companies, or being on their boards of directors. Most of those relationships were at the centers of excellence. It's important to know that only some of these relationships represented conflicts of interest, where employees were in positions to decide which companies would receive financial or technical help from their agencies. In other cases, there was no actual conflict because employees weren't in a position to make those decisions or to benefit financially from them. However, in such situations even the appearance of a conflict of interest can bring a cloud over the good intentions of the centers of excellence and our other economic development agencies.

Legislative Post Audit also found that some employees didn't disclose their financial relationships on their statements of substantial interest, which are the State's financial disclosure forms. When there's no disclosure, an individual employee could have a conflict of interest

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HOUSE ECONOMIC DEVELOPMENT
 March 18, 1997
 Attachment 4

without his or her agency knowing about it. Also, when there's no disclosure, agency managers don't have a chance to take steps to avoid both real or perceived conflicts.

We're never going to be able to legislate away even the appearance of a conflict of interest in every situation involving employees involved in economic development. And I know many of you share my interest in making certain that innovative and entrepreneurial companies in Kansas can get the start-up help they may need to grow and prosper. It's clear something needs to be done, and I think Senate Bill 18 helps us appropriately manage these potential conflicts of interest.

I am supportive of this bill, and would urge the Committee to consider it favorably.