

## MINUTES OF THE SENATE COMMITTEE ON COMMERCE.

The meeting was called to order by Chairperson Senator Karin Brownlee at 8:00 a.m. on March 16, 2001 in Room 123-S of the Capitol.

All members were present except:

Committee staff present:

April Holman, Legislative Research Department  
Bob Nugent, Revisor of Statutes  
Lea Gerard, Secretary

Conferees appearing before the committee:

Gary Sherrer, Lieutenant Governor  
Charles R. Ranson, President Kansas, Inc.

Others attending:

See attached list.

Lieutenant Governor Gary Sherrer testified in support of **HB 2505** with the exception of one section. Mr. Sherrer stated the change that has not made was the reduction of total investment from \$50 million to \$25 million (Attachment 1).

Charles Ranson, President Kansas, Inc. testified in support of **HB 2505** stating the bill is a need for seed and venture capital which will support the growth of Kansas economy. **HB 2505** will promote new industry development. It will create thousands of new jobs, will result in new tax revenues and will establish a defense against further out-migration as a strong 21<sup>st</sup> Century Kansas economy is built. Mr. Ranson stated there was only one unresolved issued and that is the size of the tax credit that fairly and equitably meets the needs of a growing economy (Attachment 2).

The Chair requested that April Holman, Legislative Research, obtain the list of companies that were located in Kansas from Charles Ranson and contact the companies to find out why they have left the state.

The committee proceeded to work **SB 306** using a balloon amendment dated March 15, 2001 (Attachment 3).

Senator Emler moved, seconded by Senator Wagle, that the balloon amendment on Page 5, Line 12, subsection (d) be adopted. Motion carried.

Senator Emler moved, seconded by Senator Wagle, that the balloon amendment on Page 5, Line 23 be adopted. Motion carried.

Senator Jordan moved, seconded by Senator Emler, that the balloon amendment on Page 5, Line 35, Line 37, Line 39 and Line 41 be adopted. Motion carried.

Senator Emler moved, seconded by Senator Wagle, Page 6, Line 3, to strike the word "construction" in the balloon amendment and to adopt that balloon amendment. Motion carried.

Senator Barone moved, seconded by Senator Steineger, a substitute motion to adopt conceptual language on Page 6, Line 5 "Any such fee shall be established in such amount as may be mutually agreed upon as to recover the reasonable and just costs the city incurs managing the construction". Motion carried.

Senator Emler moved, seconded by Senator Wagle, that the balloon amendments on Page 6, Line 24 and Line 41 be adopted. Motion carried.

Senator Emler moved, seconded by Senator Jenkins, the balloon amendments on Page 7 and 8 be adopted. Motion carried.

Meeting adjourned at 9:30 a.m.

Next meeting scheduled March 19, 2001 at 8:30 a.m.



STATE OF KANSAS



GARY SHERRER  
LIEUTENANT GOVERNOR

Senate Commerce Committee

Testimony of Lieutenant Governor Gary Sherrer on H.B. 2505  
March 16, 2001

Madame Chairwoman and Members of the Committee:

The past few months Rich Bendis, President of KTEC, and Charles Ranson, President of Kansas, Inc., have worked with me to craft a bill that we could all support. I am grateful to them for their efforts. The bill before you reflects our agreement with one exception.

I am here today to support this bill with the exception of that particular section. As many of you know, I was not in support of a similar bill that was introduced last session. I believed that ten years was too long to invest funds; that has been reduced to five. I believed that a 100% tax credit was too rich and removed the risk that should be part of venture capital; that has been changed to 50%. I believed the section that took the restrictions on type of eligible business off after the initial investment was subject to abuse; that has been changed. There are other changes that have also strengthened this bill. Unfortunately, one change that has not been made was the reduction of total investment from \$50 million to \$25 million. Unless that is changed, I cannot support this bill.

Senate Commerce Committee  
MARCH 16, 2001  
Attachment 1-2

**Testimony in Support of HB 2505**  
**Senate Committee**  
**Charles R. Ranson, President**  
**Kansas, Inc.**  
**March 16, 2001**

Madam Chair and Members of the Committee.

I appreciate the opportunity to come before you today to speak in support of HB 2505, a bill to satisfy the well documented need for seed and venture capital with which to support the growth of Kansas' economy. HB 2505 accomplishes this objective by offering a 50 percent tax credit against personal, corporate, premium or privilege tax liability as an inducement to qualified investors to capitalize for profit, privately managed, privately owned, privately funded, and publicly regulated investment firms authorized to do business as certified Capital Formation Companies.

This bill represents the culmination of more than three years work. Beginning in 1998 with a Kansas, Inc sponsored "best practices" study of successful seed and venture capital programs around the country, our focus was on how to meet the capital needs of Kansas entrepreneurs without direct state investment in recipient companies. Given our history with KPERS and Ad Astra programs, it was deemed essential that whatever proposal came forward emphasize transparency and accountability, and that it safeguard against the State (or its instrumentality) picking "winners and losers." Also, it was imperative that our program protect from disclosure of sensitive trade secrets the important proprietary interests of businesses that receive investment. Finally, it was deemed essential that the proposed program meet the need of growing concerns that have the potential to diversify and strengthen an economy still reliant on traditional pillars of strength that are increasingly unreliable as the underpinnings of Kansas' 21<sup>st</sup> century economy. HB 2505 meets all of these tests, and I am pleased to commend it for your favorable consideration.

Kansas regularly places near the bottom among states in venture capital investment. One recent measure reports that annualized per capita venture capital investment in the U.S. amounted to \$130.91. In that report, the per capita investment in Kansas was \$9.88. In the same report, per capita venture capital investment in Colorado amounted to \$328.84, and in Missouri, to \$52.16. Make no mistake, Madam Chair and Members, just as capital is highly mobile in today's market so too are the companies that willingly relocate if they must to satisfy their capital needs. Kansas reports a sad litany of young, vibrant, entrepreneurial companies that, since we began our efforts, have relocated out-of-state or been sold to out-of-state interests as they seek to satisfy their needs for growth capital. The most striking example of this is Knowledge Communications, but the list is extensive, containing Food Labs, Agri-Technologies, HELP Innovations, Newteck, Brite Voice Systems and Coaches Edge.

Madam Chair, HB 2505 gives us the opportunity to keep the next generation of companies like those mentioned here at home. It creates within KDOCH a self-funding program to certify and to monitor the operations of between 3 and 10 Capital Formation Companies, the final number of firms depending upon the final authorized tax credit – be it \$25 million, \$12.5 million, or some amount in between.

It provides clear criteria for who can invest, how investments will be made, how tax credits will be earned and redeemed, and what will be the consequences for failure by a CFC to abide by the requirements of the law. It requires annual reporting by the CFCs and it gives to the Secretary of KDOCH audit authority. It spreads the impact of the tax credit over a ten year period by specifying that no more than ten percent of the total allowable tax credit may be redeemed in any given year, beginning in the fiscal year commencing July 1, 2003. Finally, it provides that the State shall receive 10 percent of the profits of each CFC as compensation for extending the tax credit.

HB2505 will promote new industry development. It will create thousands of new jobs, It will result in new tax revenues. And it will establish a defense against the further out-migration of so many of our best and brightest as we seek to build a strong 21st Century Kansas economy.

Madam Chair, members of the Committee, I represent to you that there remains only one unresolved issue in HB 2505. That issue is the ultimate size of the allowable tax credit. Secretary Sherrer, Mr. Bendis, and I, joined by staff from KDOCH and the Governor's office, have worked diligently to reconcile the issues that separated the parties last year. Great progress was made, and Secretary Sherrer's constructive comments have resulted in an improved bill.

While differences have been substantially narrowed as a result of these productive, good faith discussions, differences have not been totally erased. During our discussions we agreed that a 50 percent tax credit was a logical, targeted inducement to investors. But, with that tax credit, do we carryover our efforts from last year to raise a total of \$50 million for investment (with a \$25 million tax credit program) or do we reduce our goal to \$25 million in capital raised (and a resulting \$12.5 million tax credit program)? It is this issue, and this issue alone that separates the state's economic development agencies from presenting a unified front in support of HB 2505.

But, this is what the legislative process is about. It is about reconciling differences such as this and, Madam Chair, I have confidence in this committee (and in your colleagues in the House and Senate) to resolve the issue of the size of the tax credit in a way that fairly and equitably meets the needs of a growing economy in a manner consistent with our capacity over time to to make this investment that all agree is essential to the long-range economic well-being of our state.

Madam Chair, having begun work on the issue of developing a seed and venture capital bill on the day I assumed the presidency of Kansas more than three years ago, this agency's commitment has been and remains to achieve passage of legislation that is workable, that meets the needs of Kansas' entrepreneurs, and that will inspire public confidence through its transparency and accountability measures.

We know that Kansas has lost opportunities to grow exciting new companies and to diversify its economy over the past several years because we did not have in place a program to meet the risk capital needs of our best and brightest entrepreneurs at the critical seed stage in the life of their companies.

As you know, HB2505 passed from the House on Wednesday, on a vote of 71 - 51. There, the support was bipartisan and Representatives from all sectors of Kansas voted in favor of this program as meeting the needs of the emerging New Kansas Economy. As HB2505 worked its way through the House, it was reported favorably by the House Taxation Committee with a 17 - 3 margin and unanimously by the House New Economy Committee. Clearly, the need for seed capital has been acknowledged and the approach taken by this bill has gained bi-partisan endorsement.

I believe that HB2505 offers a solid framework with which to strengthen our economy. It will broaden the set of initiatives that we have in place to support economic development. Madam Chair and Members, there is no disagreement concerning the need for this Legislature to act to provide risk capital. In urging you to report HB 2505 favorably, I respectfully tell you that we cannot afford to wait another year to address this need.

Thank you for your consider, Madam Chair and Members. I am pleased to stand for your questions.

SENATE BILL No. 306

By Committee on Commerce

2-9

Senate Commerce Committee  
March 16, 2001  
Attachment 3-1

9 AN ACT concerning telecommunications; relating to the provision of lo-  
10 cal exchange telephone service; amending K.S.A. 12-2001, 17-1901,  
11 17-1902 and 17-1906 and repealing the existing sections.

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

14 New Section 1 ~~(a c)~~ It is the public policy of this state to:

*[insert new subsections (a) and (b) and re-letter the remaining sections – text of new subsections is attached]*

15 (1) Encourage competition in the provision of telecommunications  
16 services;

17 (2) reduce the barriers to entry for providers of telecommunications  
18 services so that the number and types of services offered by providers  
19 continue to increase through competition;

20 (3) ensure that ~~providers of telecommunications services do not ob-~~  
21 ~~tain a competitive advantage or disadvantage in providing local exchange~~  
22 ~~service within cities; and~~

*similarly situated [insert]*

23 (4) fairly reduce the uncertainty and litigation concerning franchise  
24 fees.

25 ~~(b c)~~ It is also the policy of this state that municipalities receive from  
26 telecommunications providers fair and reasonable compensation for the  
27 right to construct and operate ~~telegraph and telephone lines~~ in the pro-  
28 visioning of local exchange telephone service.

*telecommunications facilities [insert]*

29 ~~(e d)~~ The purpose of this act is to establish a uniform method for com-  
30 pensating municipalities for the rights granted herein that:

31 (1) Is administratively simple for municipalities and telecommuni-  
32 cations providers;

33 (2) is consistent with state and federal law;

34 (3) is competitively neutral; and

35 (4) is nondiscriminatory.

36 New Sec. 2. (a) “Access line” shall mean and be limited to retail  
37 billed and collected residential lines; business lines; ISDN lines; PBX  
38 trunks; simulated exchange access lines provided by a central office based  
39 switching arrangement where all stations served by such simulated  
40 exchange access lines are used by a single customer of the provider of  
41 such arrangement. “Access line” may not be construed to include (1)  
42 interoffice transport or other transmission media that do not terminate  
43 at an end-use customer’s premises, or (2) to permit duplicate or multiple

*[on previous page, insert new subsections (a) and (b) in New Section 1 of SB 306]*

*(a) The Kansas legislature hereby finds, determines, and declares that in 1996, the Kansas legislature and the congress of the United States enacted statutes to promote competition and reduce regulation in order to secure lower prices and higher quality services for telecommunication consumers and to encourage the rapid deployment of new telecommunications technologies. Such goals are essential to the economic and social well being of the citizens of Kansas and can be accomplished only if telecommunications providers are allowed to develop ubiquitous, seamless, statewide telecommunications network. Because competition has now developed in the telecommunications industry in the state of Kansas, it is no longer appropriate to treat telecommunications providers in the same manner as monopoly providers of other utility services. Therefore, to require telecommunications providers to seek authority from every city or other political subdivision within the state to conduct business pursuant to K.S.A. 12-2001 is unreasonable, impracticable and unduly burdensome. In addition, the legislature further finds and declares that since the public rights-of-way are held in trust for the use of the public, their use by telecommunications companies is consistent with such policies and appropriate for the public good.*

*(b) A telecommunications provider who has been issued a certificate of convenience and necessity, certificate of operating authority or service provider certificate of operating authority by the state corporation commission pursuant to Chapter 66 of the Kansas Statutes Annotated to offer local exchange service within the state requires no additional authorization or franchise by any city or other political subdivision of the state to conduct business within a given geographic area. No such city or other political subdivision has jurisdiction to regulate telecommunications providers based upon the content, nature or type of telecommunications service or signal they provide.*

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3-3

1 assessment of access line rates on the provision of a single service or on  
2 the multiple communications paths derived from a billed and collected  
3 access line. Further access line shall not include the following: Wireless  
4 telecommunications services, unbundled loop facilities, special access  
5 services, lines providing only data service without voice services processed  
6 by a telecommunications provider and private line service arrangements.

7 (b) "Access line count" means the number of access lines serving  
8 consumers within the corporate boundaries of the city on the last day of  
9 each month.

10 (c) "Access line fee" means a fee ~~to be calculated monthly based on~~  
11 ~~the number of access lines serving consumers within the corporate~~  
12 ~~boundaries of the city that the city can require a telecommunications~~  
13 ~~provider to pay.~~

14 (d) (e) "Commission" means the state corporation commission.

15 (e) (f) "Public right-of-way" means the area on, below, along or above a  
16 public roadway, highway, street, public sidewalk, alley, waterway or utility  
17 easement in which a city has an interest. The term does not include the  
18 airwaves above a right-of-way with regard to wireless telecommunications  
19 or other nonwire telecommunications or broadcast service or easements  
20 obtained by utilities or private easements in platted subdivisions or tracts.

21 (f) (g) "Telecommunications provider" means a ~~person who has been~~  
22 ~~issued a certificate of convenience and necessity, certificate of operating~~  
23 ~~authority or service provider certificate of operating authority by the com-~~  
24 ~~mission to offer local exchange service within the state.~~

25 New Sec. 3. (a) ~~Telecommunications providers require no additional~~  
26 ~~authorization or franchise by any city or other political subdivision of the~~  
27 ~~state to conduct business within a given geographic area, and no such~~  
28 ~~political subdivision has jurisdiction to regulate telecommunications pro-~~  
29 ~~viders based upon the content, nature or type of telecommunications~~  
30 ~~service or signal they provide.~~

31 (b) a) Any telecommunications provider certificated to do business in  
32 this state pursuant to the authority of the commission shall have the right  
33 to construct, maintain and operate poles, conduit, cable, switches and  
34 related appurtenances and facilities along, across, upon and under any  
35 public highway, roadway or street in this state, in accordance with and  
36 subject to the provisions of this article and article 19 of chapter 17, Kansas  
37 Statutes Annotated. Such appurtenances and facilities shall be so con-  
38 structed and maintained as not to obstruct or hinder the usual travel or  
39 public safety on such public ways.

40 (e) b) No city shall create, enact or erect any unreasonable condition,  
41 requirement or barrier for a provider's entry into or use of the public  
42 rights-of-way for the conduct of its business as a telecommunications  
43 provider.

determined by a city, up to a maximum of \$1.81 per access line per month, to be  
used by a telecommunications provider in calculating the amount of access line  
remittance. [insert]

(d) "Access line remittance" means the amount to be paid by a  
telecommunications provider to a city, the total of which is calculated by  
multiplying the access line fee, as determined by the city, by the number of access  
lines served by that telecommunications provider within that city for each month  
in that calendar quarter. [insert]

[re-letter subsections (d), (e), and (f)]

certificated local exchange carrier as defined in K.S.A. 66-1,187 (h) and a  
telecommunications carrier as defined in K.S.A. 66-1,187 (m), except that it shall  
not mean either an interexchange carrier or a competitive access provider as used  
in K.S.A. 66-1,187. [insert]

~~city or other [insert]~~

[strike subsection (a) and re-letter the remaining sections of New Section 3]

H.S.

1 New Sec. 4. (a) The governing body of a city may require telecom-  
 2 munications providers providing local exchange ~~telephone~~ service to col-  
 3 lect and remit to each such city on a quarterly basis an access line fee of  
 4 up to a maximum of \$1.81 per month per access line. The telecommu-  
 5 nications provider shall calculate on a monthly basis an amount equal to  
 6 the access line fee established by a city multiplied by the access line count.  
 7 The telecommunications provider shall remit such total amount to the  
 8 city on a quarterly basis, and not later than 45 days after the end of the  
 9 quarter. The city shall have the right to examine, upon written notice to  
 10 the telecommunications provider, no more than four times per calendar  
 11 year, those access line count records necessary to verify the correctness  
 12 of the access line count. If the access line count is determined to be  
 13 erroneous, then the telecommunications provider shall revise the access  
 14 line fees accordingly and payment shall be made upon such corrected  
 15 access line count. ~~The access line fee imposed under this section must~~  
 16 ~~be assessed in a competitively neutral manner, may not unduly impair~~  
 17 ~~competition, must be nondiscriminatory, and must comply with state and~~  
 18 ~~federal law. A city shall not be entitled to any other franchise, right of way,~~  
 19 ~~construction, excavation, inspection, repair, restoration, degradation,~~  
 20 ~~application or other permit fee, cost or penalty from telecommunications~~  
 21 ~~providers being assessed an access line fee.~~

[delete]

*If the city and the telecommunications provider cannot agree on the access line count, or are in dispute concerning the amounts due under this section for the payment of access line fees, either party may seek appropriate relief in a court of competent jurisdiction, and that court may impose all appropriate remedies, including monetary and injunctive relief, and reasonable costs and attorneys' fees; provided, however, that all claims authorized in this section must be brought within one year of the date on which the disputed payment was due. [insert]*

[delete]

22 (b) Beginning January 1, 2004, and every 36 months thereafter, a city,  
 23 subject to the public notification procedures set forth in subsection (c),  
 24 may elect to adopt a new access line fee subject to the provisions and  
 25 maximum access line fee contained in this act or may choose to decline  
 26 all or any portion of any increase in the access line fee.

27 (c) Adoption of a new access line fee by a city, subject to the provi-  
 28 sions and maximum access line fee contained in this act, shall not become  
 29 effective until the following public notification procedures occur: (1) No-  
 30 tice of the new access line fee has been read in full at three regular  
 31 meetings of the governing body; (2) immediately thereafter, notification  
 32 of the new access line fee shall be published in the official city paper once  
 33 a week for two consecutive weeks; and (3) sixty days have passed from  
 34 the date of the third regular meeting of the governing body at which the  
 35 final reading of the new access line fee occurred. If, during the period of  
 36 public notification of the new access line fee or prior to the expiration of  
 37 60 days from the date of the third regular meeting of the governing body  
 38 at which the final reading of the new access line fee occurred, 20% of  
 39 the qualified voters of such city voting for mayor, or in case no mayor is  
 40 elected then the commissioner or council member receiving the highest  
 41 number of votes at the last preceding city election, present a petition to  
 42 the governing body asking that the new access line fee be submitted to  
 43 popular vote, the mayor of the city shall issue a proclamation calling a

3-5

1 special election for that purpose. The proclamation calling such special  
2 election shall specifically state that such election is called for the adoption  
3 of the new access line fee, and the new access line fee shall be set out in  
4 full in the proclamation. The proclamation shall be published once each  
5 week for two consecutive weeks in the official city newspaper, and the  
6 last publication shall not be less than 30 days before the day upon which  
7 the special election is held. If, at the special election, the majority of votes  
8 cast shall be for the new access line fee, the new access line fee shall  
9 thereupon become effective. If a majority of the votes cast at the special  
10 election are against the new access line fee, the new access line fee shall  
11 not become effective and shall be void.

12 ~~(d) A telecommunications provider may not be required to collect or~~  
13 ~~remit an access line fee to a city on those access lines that have been~~  
14 ~~resold, leased or otherwise provided to another telecommunications~~  
15 ~~provider.~~

*A city may require a telecommunications provider to collect or remit an access  
line fee or a gross receipts fee to such city on those access lines that have been  
resold to another telecommunications provider, provided, however, that in such  
case the city shall not collect an access line fee or gross receipts fee from the  
reseller telecommunications provider. [insert to replace subsection (d) at left]*

16 (e) Notwithstanding any other provision of this act, payment by a  
17 telecommunications provider that complies with the terms of an unex-  
18 pired franchise ordinance that applies to the provider satisfies the pay-  
19 ment attributable to the provider required by this act.

20 (f) Notwithstanding any other law, a telecommunications provider  
21 that does not provide local exchange service within a city shall not be  
22 required to collect, remit or pay an access line or, franchise fee, right-of-way,<sup>23</sup>  
construction, or permit fee.

*, except for a permit fee as provided in subsection (f) of K.S.A. 17-1901. [insert]*

24 New Sec. 5. (a) Information provided to municipalities and political  
25 subdivisions under this act shall be governed by confidentiality proce-  
26 dures in compliance with K.S.A. 66-1220a, and amendments thereto.

27 New Sec. 6. (a) Except as otherwise provided, this section does not  
28 affect the validity of a franchise agreement or contract ordinance with a  
29 telecommunications provider executed before the effective date of this  
30 act. A city may continue to enforce a previously enacted franchise agree-  
31 ment or contract ordinance and to collect franchise fees and other charges  
32 under that franchise agreement or contract ordinance until the date on  
33 which the agreement or ordinance expires by its own terms or is termi-  
34 nated in accordance with the terms of this section. A telecommunications  
35 provider may elect to terminate a franchise agreement or obligations under  
36 an existing contract ordinance as of the effective date of this act. A  
37 telecommunications provider terminating a franchise ordinance under  
38 this section shall be governed by this act on the date of termination. A  
39 telecommunications provider electing to terminate an existing franchise  
40 agreement or contract ordinance under this section shall provide notice  
41 to the affected city or political subdivision not later than 60 days after the  
42 effective date of this act.

or a city [insert]

or a city [insert]

or a city [insert]

party [strike "city or a political subdivision" and insert]

43 New Sec. 7. (a) A city which receives an access line fee pursuant to

3-6

1 this act may not require a telecommunications provider to:

2 (1) Pay any compensation other than the access line fee authorized  
3 by this act, including ~~an application, permit, excavation, construction or~~  
4 ~~inspection fee~~, for the right to use a public right-of-way to provide local  
5 exchange telecommunications services in the city; or

but not limited to any application, permit, excavation, ~~construction~~, franchise,  
right-of-way, inspection, repair, restoration, degradation, or other fee, cost,  
surcharge, reimbursement, tax or penalty [insert]  
service [insert]

6 (2) provide services, facilities, equipment or goods in-kind for use by  
7 the city, political subdivision or any other telecommunications provider.

8 (b) Notwithstanding any other law or any other provision of this act,  
9 a city may require the issuance of a construction permit ~~without cost~~  
10 to a telecommunications provider locating facilities in or on public rights-of-  
11 way within the city for the provisioning of local exchange service. The  
12 terms of the permit shall be consistent with and no more restrictive than  
13 construction permits issued to other persons excavating in a public right-of-  
14 way.

except that a city may assess a one-time permit fee in connection with issuing a  
construction permit for telecommunications providers to set their fixtures in the  
public right-of-way within that city as provided in [K.S.A. 17-1901](a)(1). Any  
such fee shall be set in such a manner as to recover only the actual costs the city  
reasonably incurs managing the construction of such fixtures and must be  
applicable to all such users of the right of way in a non-discriminatory,  
competitively neutral manner. Such costs, if incurred, shall consist of  
(i) issuing, processing and verifying such permit application, (ii) inspecting the  
construction site and restoration project; and (iii) determining the adequacy of  
the right-of-way restoration; [insert]

15 (c) A city may exercise its home rule powers in the administration  
16 and regulation of a public right-of-way that apply to all persons within  
17 the city. A city may exercise home rule powers in the administration and  
18 regulation of the activities of telecommunications providers within a pub-  
19 lic right-of-way only to the extent that they are reasonably necessary to  
20 protect the health, safety and welfare of the public. Any home rule based  
21 regulation must be competitively neutral and may not be unreasonable  
22 or discriminatory. A city or political subdivision specifically may not im-  
23 pose regulations on telecommunications providers of local exchange serv-  
24 ice that are not authorized by this act, including:

strike "without cost" in line 9 to agree with change above

25 (1) Requirements that particular business offices or other telecom-  
26 munications facilities be located in the city;

but not limited to: [insert]

27 (2) requirements for filing reports and documents with the city that  
28 are not required by state law to be filed with the city and that are not  
29 related to the use of a public right-of-way;

30 (3) requirements for inspection of a provider's business records ex-  
31 cept to the extent necessary to conduct the review of the records related  
32 to the access line count as provided for in this act;

33 (4) requirements for approval of transfers of ownership or control of  
34 a telecommunications provider's business, except that a city may require  
35 that a telecommunications provider maintain current point of contact in-  
36 formation and provide notice of a transfer within a reasonable time; and

37 (5) requiring the provisioning of services, facilities, equipment or  
38 goods in-kind for use by the city, political subdivision or any other tele-  
39 communications provider or public utility.

40 (d) In the exercise of its lawful regulatory authority, a city shall  
41 promptly process each valid and administratively complete application of  
42 a telecommunications provider for any permit, license or consent to ex-  
43 cavate, set poles, locate lines, construct facilities, make repairs, affect

,and in no event more than ~~15~~ 30 days, [insert]

1 traffic flow, obtain zoning or subdivision regulation approvals or for other  
2 similar approvals, and shall make every reasonable effort to not delay or  
3 unduly burden that provider in the timely conduct of its business.

4 (e) If there is an emergency necessitating response work or repair, a  
5 telecommunications provider may begin that repair or emergency re-  
6 sponse work or take any action required under the circumstances, pro-  
7 vided that the telecommunications provider notifies the affected city as  
8 promptly as possible after beginning the work.

9 (f) ~~The~~ compensation paid under this act is in lieu of any permit,  
10 license, approval, inspection or other similar fee or charge, including all  
11 general business license fees customarily assessed by a city for the use of  
12 a public right-of-way against persons operating telecommunications-re-  
13 lated businesses. The compensation paid under this act constitutes full  
14 compensation to a city for all of a telecommunications provider's facilities  
15 located within a public right-of-way, including interoffice transport and  
16 other transmission media that do not terminate at an end-use customer's  
17 premises, even though those types of lines are not used in the calculation  
18 of the compensation. This act may not be construed to affect the ad  
19 valorem taxation of a telecommunications provider's facilities ~~or to permit~~  
20 ~~the ad valorem taxation of a certificated telecommunication provider's~~  
21 ~~occupaney of a public right-of-way.~~

22 (g) (i) Telecommunications providers shall indemnify and hold the city  
23 and its officers and employees harmless against any and all claims, law-suits,  
24 judgments, costs, liens, losses, expenses, fees (including reasonable  
25 attorney fees and costs of defense), proceedings, actions, demands, causes  
26 of action, liability and suits of any kind and nature, including personal or  
27 bodily injury (including death), property damage or other harm for which  
28 recovery of damages is sought ~~that~~ is found by a court of competent  
29 jurisdiction to be caused ~~solely by the negligent act, error or omission~~ of  
30 the ~~franchised~~ \* telecommunications provider, any agent, officer, director,  
31 representative, employee, affiliate or subcontractor of the ~~franchised~~ \* tel-  
32 ecommunications provider, or their respective officers, agents, employ-  
33 ees, directors or representatives, while installing, repairing or maintaining  
34 facilities in a public right-of-way. The indemnity provided by this subsec-  
35 tion does not apply to any liability resulting from the negligence of the  
36 city, its officers, employees, contractors or subcontractors. If a ~~franchised~~ \*  
37 telecommunications provider and the city are found jointly liable by a  
38 court of competent jurisdiction, liability shall be apportioned compara-  
39 tively in accordance with the laws of this state without, however, waiving  
40 any governmental immunity available to the city under state law and with-  
41 out waiving any defenses of the parties under state law. This section is  
42 solely for the benefit of the city and ~~franchised~~ \* telecommunications pro-  
43 vider and does not create or grant any rights, contractual or otherwise, to

*The city shall use its best efforts to assist the telecommunications provider in  
obtaining all such permits, licenses and other consents in an expeditious and  
timely manner. [insert]*

*[delete "as" and "as possible" in lines 7 & 8]*

*Except as otherwise provided in subsections (a)(1), (g) and (h), the [insert]*

*insert "(a)(1)," in above amendment*

*[delete language as marked]*

*(g) A city may require a telecommunications provider to repair all damage to  
a public right-of-way caused by the activities of that provider, or of any agent  
affiliate, employee, or subcontractor of that provider, while installing, repairing,  
or maintaining facilities in a public right-of-way, and to return the right-of-way to  
its appearance before the damage. If the provider fails to make the repairs  
required by the city, the city may effect those repairs and charge the provider the  
cost of those repairs. If a city incurs damages as a result of a violation of this  
subsection (g), then the city shall have a cause of action against a provider for  
violation of this subsection, and may recover its damages, including reasonable  
attorneys' fees, if the provider is found liable by a court of competent jurisdiction.  
[insert]*

*[insert new subsection (h) and re-letter remaining sections – text attached]*

*to the extent that it [insert]*

*by the negligence [insert]*

*[delete "franchised" in four places marked with an asterisk (\*) in lines 30, 31, 36,  
& 42 and re-letter (g) as (i)]*

U.C

*[on previous page, insert new subsection (h) in New Sec. 7 of SB 306]*

*(h) A city may require a telecommunications provider to relocate or adjust any of its facilities in the **public** right-of-way for any public funded improvement or public funded project. Such relocation or adjustment shall be performed by such telecommunications provider at its sole expense without expense to the city, its employees, agents, or authorized contractors and shall be specifically subject to rules and regulations of the city. Such relocation or adjustment shall be completed as soon as reasonably possible within the time set forth in any request by the city for such relocation or adjustment. Any damages suffered by the city or its contractors as a result of a telecommunications provider's failure to timely relocate or adjust its facilities shall be borne by said telecommunications provider.*

8.3

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1 any other person or entity.

2 ~~(h)~~ (j) A telecommunications provider or city shall promptly advise the  
3 other in writing of any known claim or demand against the franchised \*  
4 telecommunications provider or the city related to or arising out of the  
5 franchised \* telecommunications provider's activities in a public right-of-  
6 way.

7 New Sec. 8. A telecommunications provider which is assessed, collect-  
8 s and remits an access line ~~or other fee assessed by a city shall add to~~  
9 ~~its end-user customer's bill [or charge as a part of the rate for service to~~  
10 ~~that end-user customer located within the boundaries of the city, a sur-~~  
11 ~~charge equal to the [pro rata share of any access line, occupation, franchise,~~  
12 ~~business license, excise, privilege or other similar special charge or tax,~~  
13 ~~now or hereafter imposed upon the telecommunications provider by the~~  
14 ~~city whether by statute, ordinance, law or otherwise, and whether pres-~~  
15 ~~ently due or to hereafter become due.~~

16 Sec. 9. K.S.A. 12-2001 is hereby amended to read as follows: 12-  
17 2001. (a) The governing body of any city may permit any person, firm or  
18 corporation to:

19 (1) Manufacture, sell and furnish artificial or natural gas light and  
20 heat; electric light, water, power or heat; or steam heat to the inhabitants;

21 (2) build street railways, to be operated over and along or under the  
22 streets and public grounds of such city;

23 (3) ~~construct and operate telegraph and telephone lines;~~

24 ~~(4) lay pipes, conduits, cables and all appliances necessary for the~~  
25 ~~construction, operation of gas and electric-light or steam-heat plants;~~

26 ~~(5) (4) lay pipes, conduits, cables and all appliances necessary for the~~  
27 ~~construction and operation of electric railways or bus companies;~~

28 ~~(6) (5) lay pipes for the operation of a water plant for the distribution~~  
29 ~~or furnishing of water over, under and along the streets and alleys of such~~  
30 ~~city; or~~

31 ~~(7) (6) use the streets in the carrying on of any business which is not~~  
32 ~~prohibited by law.~~

33 (b) If the governing body of a city permits any activity specified in  
34 subsection (a), the granting of permission to engage in the activity shall  
35 be subject to the following:

36 (1) All contracts granting or giving any such original franchise, right  
37 or privilege, or extending or renewing or amending any existing grant,  
38 right, privilege or franchise, to engage in such an activity shall be made  
39 by ordinance, and not otherwise.

40 (2) No contract, grant, right, privilege or franchise to engage in such  
41 an activity, now existing or hereafter granted, shall be extended for any  
42 longer period of time than 20 years from the date of such grant or  
43 extension.

*[delete "franchised" in two places marked with an asterisk (\*) in lines 3 & 5 and re-letter (h) as (j)]*

*Without prejudice to a telecommunications provider's other rights and authorities, a [insert] ,statement, or invoice [insert]*

*access line fee. [insert]*

1 (3) No person, firm or corporation shall be granted any exclusive  
2 franchise, right or privilege whatever.

3 (4) The governing body of any city, at all times during the existence  
4 of any contract, grant, privilege or franchise to engage in such an activity,  
5 shall have the right by ordinance to fix a reasonable schedule of maximum  
6 rates to be charged such city and the inhabitants thereof for gas, light and  
7 heat, electric light, power or heat, steam heat or water; the rates of fare  
8 on any street railway or bus company; ~~the rates of any telephone company;~~  
9 or the rates charged any such city, or the inhabitants thereof, by any  
10 person, firm or corporation operating under any other franchise under  
11 this act. The governing body at no time shall fix a rate which prohibits  
12 such person, firm or corporation from earning a reasonable rate upon the  
13 fair value of the property used and useful in such public service. In fixing  
14 and establishing such fair value, the value of such franchise, contract and  
15 privilege given and granted by the city to such person, firm or corporation  
16 shall not be taken into consideration in ascertaining the reasonableness  
17 of the rates to be charged to the inhabitants of such city.

18 (5) No such grant, right, privilege or franchise shall be made to any  
19 person, firm, corporation or association unless it provides for adequate  
20 compensation or consideration therefor to be paid to such city, and re-  
21 gardless of whether or not other or additional compensation is provided  
22 for such grantee shall pay annually such fixed charge as may be prescribed  
23 in the franchise ordinance. Such fixed charge may consist of a percentage  
24 of the gross receipts derived from the service permitted by the grant,  
25 right, privilege or franchise from consumers or recipients of such service  
26 located within the corporate boundaries of such city, and, in case of ~~public~~  
27 ~~utilities or common carriers~~ *entities affected by this act* situated and op-  
28 erated wholly or principally within such city, or principally operated for  
29 the benefit of such city or its people, from consumers or recipients located  
30 in territory immediately adjoining such city and not within the boundaries  
31 of any other incorporated city; and in such case such city shall make and  
32 report to the governing body all such gross receipts once each month, or  
33 at such other intervals as stipulated in the franchise ordinance and pay  
34 into the treasury the amount due such city at the time the report is made.  
35 The governing body shall also have access to and the right to examine, at  
36 all reasonable times, all books, receipts, files, records and documents of  
37 any such grantee necessary to verify the correctness of such statement  
38 and to correct the same, if found to be erroneous. If such statement of  
39 gross receipts is incorrect, then such payment shall be made upon such  
40 corrected statement.

41 On and after the effective date of the act, any provision for compen-  
42 sation or consideration, included in a franchise granted pursuant to this  
43 section which is established on the basis of compensation or consideration

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1 paid by the utility under another franchise, is hereby declared to be con-  
2 trary to the public policy of this state and shall be void and unenforceable.  
3 Any such provision, included in a franchise granted pursuant to this sec-  
4 tion and in force on the effective date of this act which requires payments  
5 to the city by a utility to increase by virtue of the compensation or con-  
6 sideration required to be paid under a franchise granted by another city  
7 to the utility's predecessor in interest, is hereby declared to be contrary  
8 to the public policy of this state and shall be void and unenforceable.

9 (6) No such right, privilege or franchise shall be granted until the  
10 ordinance granting the same has been read in full at three regular meet-  
11 ings of the governing body. Immediately after the final passage, the or-  
12 dinance shall be published in the official city paper once a week for two  
13 consecutive weeks. Such ordinance shall not take effect and be in force  
14 until after the expiration of 60 days from the date of its final passage. If,  
15 pending the passage of any such ordinance or during the time between  
16 its final passage and the expiration of 60 days before such ordinance takes  
17 effect, 20% of the qualified voters of such city voting for mayor, or in case  
18 no mayor is elected then the commissioner or council member receiving  
19 the highest number of votes, at the last preceding city election present a  
20 petition to the governing body asking that the franchise ordinance be  
21 submitted for adoption to popular vote, the mayor of the city shall issue  
22 a proclamation calling a special election for that purpose. The procla-  
23 mation calling such special election shall specifically state that such elec-  
24 tion is called for the adoption of the ordinance granting such franchise,  
25 and the ordinance shall be set out in full in the proclamation. The procla-  
26 mation shall be published once each week for two consecutive weeks  
27 in the official city newspaper, and the last publication shall not be less  
28 than 30 days before the day upon which the special election is held. If,  
29 at the special election, the majority of votes cast shall be for the ordinance  
30 and the making of the grant, the ordinance shall thereupon become ef-  
31 fective. If a majority of the votes cast at the special election are against  
32 the ordinance and the making of the grant, the ordinance shall not confer  
33 any rights, powers or privileges of any kind whatsoever upon the appli-  
34 cants therefor and shall be void.

35 All expense of publishing any ordinance adopted pursuant to this sec-  
36 tion shall be paid by the proposed grantee. If a sufficient petition is filed  
37 and an election is called for the adoption of any such ordinance, the  
38 applicants for the grant, right, privilege or franchise, upon receipt by the  
39 applicants of written notice that such petition has been filed and found  
40 sufficient and stating the amount necessary for the purpose, shall im-  
41 mediately deposit with the city treasurer in cash an amount sufficient to  
42 cover the entire expense of such election. The mayor shall not issue a  
43 proclamation calling such election until such money is deposited with the

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1 treasurer. Upon such failure to so deposit such money the ordinance shall  
2 be void.

3 (7) All contracts, grants, rights, privileges or franchises for the use of  
4 the streets and alleys of such city, not herein mentioned, shall be governed  
5 by all the provisions of this act, and all amendments, extensions or en-  
6 largements of any contract, right, privilege or franchise previously granted  
7 to any person, firm or corporation for the use of the streets and alleys of  
8 such city shall be subject to all the conditions provided for in this act for  
9 the making of original grants and franchises. The provisions of this section  
10 shall not apply to railway companies for the purpose of reaching and  
11 affording railway connections and switch privileges to the owners or users  
12 of any industrial plants, or for the purpose of reaching and affording  
13 railway connections and switch privileges to any agency or institution of  
14 the state of Kansas.

15 Sec. 10. K.S.A. 17-1901 is hereby amended to read as follows: 17-  
16 1901. ~~Corporations (a) Companies~~ [created for the purpose of constructing  
17 and maintaining ~~magnetic telegraph lines~~ *telecommunications systems* [are  
18 authorized to:

*Telecommunications companies certified pursuant to K.S.A. Chapter 66 or  
other entities [insert]  
facilities [insert]*

19 (1) Set their poles, piers, abutments, wires and other fixtures includ-  
20 ing but not limited to, conduits, ducts, lines, pipes, cables, culverts, tubes,  
21 manholes, transformers, regulator stations, underground vaults, receivers,  
22 transmitters, repeaters or amplifiers usable for the transmission or dist-  
23 tribution of any [service along, upon, over, under and across any of the  
24 public roads, streets, highways, bridges, and waters and other public  
25 rights-of-way of this state, in such manner as not to permanently incom-  
26 mode the public in the use of such ~~roads, streets and waters~~ rights-of-  
27 way; and

*telecommunications [insert]*

28 (2) use those facilities for the transmission or distribution of any  
29 service.

*telecommunications [insert]  
[insert new language at the beginning of Section 10, subsection (b) – text  
attached]*

30 (b) ~~No~~ [council of any city or trustee of any incorporated town or  
31 village shall discriminate among or grant a preference to competing tel-  
32 ecommunications providers] in the issuance of rights-of-way permits or  
33 the passage of any ordinance for the use of its rights-of-way, nor impose  
34 any unreasonable requirements for entry to the rights-of-way for such  
35 providers, including but not limited to, excess conduit and equipment  
36 installation requirements; collocation requirements; facilities engineering  
37 and design approval requirements; or consent provisions with respect to  
38 a telecommunications provider's ability to transfer ownership]

*[replace the word "providers" with "companies or other entities" in lines 32 and  
35]*

39 Sec. 11. K.S.A. 17-1902 is hereby amended to read as follows: 17-  
40 1902. Telephone companies ~~Telecommunications service providers~~ shall  
41 have all the rights and powers conferred and be subject to all the liabilities  
42 imposed by the general laws of this state upon ~~telephone and telegraph~~  
43 companies.

*the transfer of ownership of a telecommunications company or other entity.  
[insert]*

*[insert new subsections (c), (d) and (e) in K.S.A. 17-1901 – text attached]*

*[Strike Section 11 from the bill – KSA 17-1902 – and retain as current law]*

*[on previous page, insert the following new text at the beginning of subsection (b) in K.S.A. 17-1091]*

*A city may take all reasonable and necessary actions to manage its right-of-way, through the reasonable exercise of its police powers, to impose rights, duties, and obligations on all users of the public right-of-way in a reasonable, competitively neutral, nondiscriminatory, and uniform manner, reflecting the distinct engineering, construction, operation, maintenance, and safety requirements of each user of the right-of-way; provided that no action of the city may conflict with state or federal law or regulation, and that no ... [insert]*

*[on previous page, insert new subsections (c), (d) and (e) in K.S.A. 17-1901]*

*(c) A city may require a telecommunications company or other entity to repair all damage to a public right-of-way caused by the activities of that company or entity, or of any agent affiliate, employee, or subcontractor of that company or entity, while installing, repairing, or maintaining facilities in a public right-of-way, and to return the right-of-way to its appearance before the damage. If the company or entity fails to make the repairs required by the city, the city may effect those repairs and charge the company or entity the cost of those repairs. If a city incurs damages as a result of a violation of this subsection, then the city shall have a cause of action against the company or entity for violation of this subsection, and may recover its damages, including reasonable attorneys' fees, if the company or entity is found liable by a court of competent jurisdiction.*

*(d) A city may require a telecommunications provider to relocate or adjust any of its facilities in the **public** right-of-way for any public funded improvement or public funded project. Such relocation or adjustment shall be performed by such telecommunications provider at its sole expense without expense to the city, its employees, agents, or authorized contractors and shall be specifically subject to rules and regulations of the city. Such relocation or adjustment shall be completed as soon as reasonably possible within the time set forth in any request by the city for such relocation or adjustment. Any damages suffered by the city or its contractors as a result of a telecommunications provider's failure to timely relocate or adjust its facilities shall be borne by said telecommunications provider.*

*(~~d~~ e) Telecommunications companies or other entities shall indemnify and hold the city and its officers and employees harmless against any and all claims, law-suits, judgments, costs, liens, losses, expenses, fees (including reasonable attorney fees and costs of defense), proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including personal or bodily injury (including death), property damage or other harm for which recovery of damages is sought to the extent that it is found by a court of competent jurisdiction to be caused by the negligence of the telecommunications company or*

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other entity, any agent, officer, director, representative, employee, affiliate or subcontractor of the telecommunications company or other entity, or their respective officers, agents, employees, directors or representatives, while installing, repairing or maintaining facilities in a public right-of-way. The indemnity provided by this subsection does not apply to any liability resulting from the negligence of the city, its officers, employees, contractors or subcontractors. If a telecommunications company or other entity and the city are found jointly liable by a court of competent jurisdiction, liability shall be apportioned comparatively in accordance with the laws of this state without, however, waiving any governmental immunity available to the city under state law and without waiving any defenses of the parties under state law. This section is solely for the benefit of the city and telecommunications company or other entity and does not create or grant any rights, contractual or otherwise, to any other person or entity. [insert]

~~(f) For telecommunications providers that utilize public rights of way within a city but do not provide local exchange service a~~ A city may assess a one-time permit fee in connection with issuing a construction permit for providers to set their fixtures in the public right-of-way within that city as provided in [K.S.A. 17-1901](a)(1) Any such fee shall be set in such a manner as to recover only the actual costs the city reasonably incurs managing the construction of such fixtures and must be applicable to all such users of the right of way in a non-discriminatory, competitively neutral manner. Such costs, if incurred, shall consist of (i) issuing, processing and verifying such permit application, (ii) inspecting the construction site and restoration project; and (iii) determining the adequacy of the right-of-way restoration. [insert]

strike first portion of first sentence in paragraph (f) above

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1 Sec. ~~12~~ 11. K.S.A. 17-1906 is hereby amended to read as follows: 17-  
 2 1906. The council of any city or trustees of any incorporated town or  
 3 village through which the line of any telegraph corporation ~~telecommu-~~  
 4 ~~nications provider\*~~ is to pass, may, by ordinance or otherwise, specify  
 5 where the ~~posts poles~~, piers or abutments shall be located, the kind of  
 6 ~~posts poles~~ that shall be used, the height at which the wires shall be run,  
 7 and such ~~company telecommunications provider\*~~ shall be governed by the  
 8 ~~regulation thus prescribed; and such regulations if such regulations are~~  
 9 ~~reasonable, competitively neutral and nondiscriminatory and will not re-~~  
 10 ~~sult in a reduction in service quality.~~ After the erection of ~~said telegraph~~  
 11 ~~the poles and lines,~~ the council of any city or the trustees of any incor-  
 12 porated town or village shall have power, *subject to the restrictions of this*  
 13 *section,* to direct any alteration in the location or erection of ~~said posts~~  
 14 ~~the poles,~~ piers or abutments, and also in the height at which the wires  
 15 shall run, having first given such ~~company provider\*~~ or its agents oppor-  
 16 tunity to be heard in regard to such alteration. *[The council of any city or*  
 17 *the trustees of any incorporated town or village shall not arbitrarily re-*  
 18 *strict the provider's use of any public rights-of-way, so long as said use*  
 19 *does not interfere with the public's use of same.*

20 *A telecommunications provider's right to access and use of public*  
 21 *rights-of-way shall not be unreasonably delayed or restricted. No such*  
 22 *council or trustees shall require any conditions that are inconsistent with*  
 23 *applicable federal law or the rules and regulations of the federal energy*  
 24 *regulatory commission, United States department of transportation, fed-*  
 25 *eral communications commission or the state corporation commission.*

26 Sec. ~~13~~ 12. K.S.A. 12-2001, 17-1901, ~~17-1902~~ and 17-1906 are hereby  
 27 repealed.

28 Sec. 14 13. This act shall take effect and be in force from and after its  
 29 publication in the statute book.

*[renumber Section 12 as Section 11]*

*consistent with industry standards [insert]*

*[replace the word "provider" with the words "telecommunications company or other entity" at each place marked with an asterisk (\*) in lines 3, 7, & 15]*

***A city may require a telecommunications provider to relocate or adjust any of its facilities in the public right-of-way for any public funded improvement or public funded project. Such relocation or adjustment shall be performed by such telecommunications provider at its sole expense without expense to the city, its employees, agents, or authorized contractors and shall be specifically subject to rules and regulations of the city. Such relocation or adjustment shall be completed as soon as reasonably possible within the time set forth in any request by the city for such relocation or adjustment. Any damages suffered by the city or its contractors as a result of a telecommunications provider's failure to timely relocate or adjust its facilities shall be borne by said telecommunications provider. Upon request from a city as part of that city's efforts to construct, operate, or maintain its right of way, a telecommunications provider shall forthwith remove, relocate, or reinstall its facilities in a right of way, and the cost of such removal, relocation, or reinstallation shall be the exclusive obligation of the telecommunications provider; provided, however, that the city's request to the telecommunications provider shall be reasonable and nondiscriminatory with respect to other occupants of the right of way.***  
*[insert]*

*telecommunications company's or other entity's [insert]*

*company's or other entity's [insert]*

*[renumber Section 13 as Section 12, renumber Section 14 as Section 13, and strike the reference to 17-1902 in Section 13 (now 12).]*