

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 21, 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: Rich Bendis, President and CEO, KTEC

Others attending: See attached sheet.

The committee chairperson sent a memo to all committee members that work on **SB 306** will be completed at the Senate Commerce Committee meeting Thursday, March 22, 2001. If committee members have language changes, they are to submit to Bob Nugent, Revisor of Statutes before Thursday's meeting (Attachment 1).

**HB 2301**

Senator Brungardt moved, seconded by Senator Steineger to adopt the balloon amendments for **HB 2301** as presented in open discussion. Motion carried.

Senator Steineger moved, Senator Emler seconded that **HB 2301** be recommended favorable for passage. Motion carried.

**HB 2303**

Bob Nugent, Revisor of Statutes, gave a brief overview of the balloon amendment for **HB 2303** that changes the way Indian Tribes are treated under existing law. The existing law for Indian Tribe coverage of unemployment for and on behalf of a Indian Tribes is optional. The Federal Government has changed the requirement so it is a conformity issue that Indian tribes must be covered under the state act now and given the option to act as a reimbursing employer. They would not be liable for FUTA taxes but any unemployment claims they incur would be paid back on a reimbursement basis. If they failed to make those payments, they would lose their ability to act on a reimbursing basis and would be liable for FUTA taxes. The impact is potentially about \$420 million dollars.

Senator Kerr moved, seconded by Senator Jordan to adopt the balloon amendments for **HB 2303** and be recommended favorable for passage. Motion carried.

**HB 2505**

Senator Brownlee sent information regarding Venture Capital to Committee members on March 20, 2001.

Rich Bendis, President and CEO, KTEC, gave an overview of the balloon amendments for **HB 2505** (Attachment 2). The balloon amendment, Page 9, Line 29 is made up of three components. The first issue involves the management of excess funds and marketable securities. Funds will want to distribute the net proceeds once an investment is liquidated. This has a positive effect on the rate of return and gives the program more credibility. The second issue of the balloon is the Capital Formation Company (CFC) should be free to distribute marketable securities so the fund managers may not be vulnerable to claims of investors if the stock being held goes down or if they sale the stock and it increases. The third issue of the balloon relates to the funds will be a "pass through entity" in which income earned or incurred during a year is passed through to the investors.

The explanation for the balloon on Page 10, Line 12, Section 2 is that it is designed to limit the CFC from investing too heavily, more than 20% of CFC assets in any one deal. The limitation should be tied to either 20% of the original capital or 20% of the original capital adjusted for gains and losses.

Rich Bendis explained there is a new phenomenon that has occurred in the last five years in the Venture Capital industry called "Fund-to-Funds". What happens is creditor institutional investors are spreading their risk by investing in multiple venture capital funds rather than putting all their eggs in one basket. This diversifies geographical and industry distribution as well as management for their investments.

Chairperson Brownlee declared the hearing closed on **HB 2505**.

Senator Brungardt made a motion to amend **HB 2505** by reducing the tax credits allowed not to exceed \$12,500,000. and not to exceed \$1,250,000 per fiscal year, Page 5, subsection (c), Line 17 thru 19. Senator Emler seconded only to open for discussion purposes.

The Committee discussed that if the bill is amended, it may not be enough money to give the program a chance. If the Venture Capital program is to be a success, there needs to be enough money available to attract investors. The net lost per year is not the stated amount of the bill because there are offsets such as hiring of personnel and payroll taxes being paid back to the state. There is no doubt that numerous deals in the last several years, quality deals from people outside of the state to make significant investments and part of their qualifications for putting the money in is that they want to have it close enough to keep an eye on it. Venture Capital does not travel well in spite of the comments about technology and so forth, investors want to be able to go see their investments and be in the shop several times a year. There is a demand for this type of money that far exceeds even the higher amount and would not be wise to cut it down.

The motion was denied to amend **HB 2505**, Page 5, subsection (c), Line 17 thru 19.

Senator Jenkins moved, seconded by Senator Kerr to adopt the balloon amendments for **HB 2505**. Motion carried.

Senator Jenkins moved, seconded by Senator Wagle that **HB 2505** be recommended favorable for passage. Motion carried.

Meeting adjourned at 9:30 a.m.

Next meeting scheduled March 22, 2001 at 8:30 a.m.

SENATE COMMERCE COMMITTEE

GUEST LIST

DATE: MARCH 21, 2001

NAME	REPRESENTING
Bill Layes	KDHR
Edwin W. Anglin	KDHR
David Tabe	KBEMS
DON DOESILEN	KDHR-legal services
Phil Harvers	KDHR-Work. Comp.
Rich Guthrie	Health Midwest
Kevin Carr	KTEC
RICH BENDIS	KTEC
Beth Brugh	KTEC
Pat Lehman	KFSA
Jim KEATING	KS AFC
Taula (Graham)	KID
Kathy Greer	KS Ins Dept
John Washburn	KS INS DEPT
Dick Cook	" " "
Sherry Brown	KDOCEH
Bub Conant	KTCA
Rob Hodges	KTIA

March 20, 2001

To: Members of Senate Commerce Committee

From: Senator Karin Brownlee, Chairperson

Re: SB 306

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We will complete our work on SB 306 Thursday Morning. We will take the remaining proposed amendments/balloons in one motion. Any language changes you would like to see must be submitted to the revisor, Bob Nugent who will then have those proposals to committee members by Wednesday. Anything not in writing to committee members on Wednesday, will not be considered.

Please get any remaining questions answered before Thursday's meeting. No further input from city personnel or industry representatives will be acknowledged at Thursday's meeting.

I want to thank each committee member for their hard work on this issue. I have greatly appreciated your continuousness on a difficult topic.

Senate Commerce Committee  
MARCH 21, 2001  
Attachment 1-1

3  
4 **HOUSE BILL No. 2505**

5  
6 By Committee on Federal and State Affairs

7  
8 2-14

9  
10 AN ACT relating to income taxation; concerning venture capital; enact-  
11 ing the Kansas certified capital formation company act.

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

14 Section 1. This act shall be known and may be cited as the Kansas  
15 certified capital formation company act. The purpose of this act is to  
16 enhance the development of seed and venture capital in Kansas and to  
17 support the modernization and expansion of the state's economy. As used  
18 in this act, unless the context clearly requires otherwise, the following  
19 terms mean:

20 (a) "Affiliate of a certified capital formation company" means:

21 (1) Any person that directly or indirectly, owns, controls or possesses  
22 the power or ability to vote ten percent or more of the outstanding voting  
23 securities or other beneficial ownership interests of the Kansas certified  
24 capital formation company;

25 (2) any person ten percent or more of whose outstanding voting se-  
26 curities or other beneficial ownership interests are directly or indirectly  
27 owned, controlled or possessed with the power to be voted by the Kansas  
28 certified capital formation company;

29 (3) any person directly or indirectly controlling, controlled by, or un-  
30 der common control with the Kansas certified capital formation company;

31 (4) any partnership in which the Kansas certified capital formation  
32 company is a general partner;

33 (5) any person who is an officer, director, general partner, managing  
34 member, managing director or agent of the Kansas certified capital for-  
35 mation company or an immediate family member of such person.

36 (b) "Affiliate of an investor" means:

37 (1) Any person that directly or indirectly, owns, controls or possesses  
38 the power or ability to vote ten percent or more of the outstanding voting  
39 securities or other beneficial ownership interests of the investor;

40 (2) any person ten percent or more of whose outstanding voting se-  
41 curities or other beneficial ownership interests are directly or indirectly  
42 owned, controlled or possessed with the power to be voted by the  
43 investor;

1 intends to invest and identify the business in which it intends to make  
 2 the investment. The CFC shall also provide to the secretary a written  
 3 explanation of the basis for its determination that the business meets the  
 4 definition of a qualified Kansas business, if the secretary determines that  
 5 the business does not meet the definition of a qualified Kansas business,  
 6 the secretary, within the 30 working day period prior to the making of  
 7 the proposed investment, shall notify the CFC of the determination and  
 8 provide the CFC an explanation thereof. If the secretary fails to notify  
 9 the CFC of the determination within the 30 working day period pre-  
 10 scribed herein, the business in which the CFC proposes to invest shall  
 11 be deemed to be a qualified Kansas business. If a CFC fails to notify the  
 12 secretary prior to making an initial investment in a business, the business  
 13 in which the CFC invested shall be deemed not to be a qualified Kansas  
 14 business even though the business, at the time of the investment, met  
 15 the requirements of section 1, and amendments thereto;

16 ~~—(6)~~ all certified capital which is not then required to be invested in  
 17 qualified venture capital investments or which has been previously in-  
 18 vested in qualified venture capital investments and returned by the com-  
 19 pany, may be held or invested in such manner as the CFC, in its discre-  
 20 tion, deems appropriate. The proceeds of all certified capital which is  
 21 returned to a CFC after it was originally invested in qualified venture  
 22 capital investments, may be invested in other qualified venture capital  
 23 investments and shall be credited toward any requirement in this act with  
 24 respect to placing certified capital in qualified venture capital  
 25 investments.

26 (b) A CFC may make qualified distributions at any time. In order to  
 27 lawfully make liquidating distributions, a CFC must have invested an  
 28 aggregate amount equal to 100% of its certified capital in qualified ven-  
 29 ture capital investments/

30 (c) Liquidating distributions in excess of the certified capital forma-  
 31 tion company's original certified capital and any additional capital contri-  
 32 butions to the certified capital formation company shall be subject to audit  
 33 by a certified public accounting firm acceptable to the secretary, at the  
 34 expense of the certified capital formation company.

35 (d) If at the time any liquidating distribution is made by a CFC, the  
 36 aggregate sum of all liquidating distributions of the CFC exceeds the  
 37 aggregate sum of the CFC's original certified capital and any subsequent  
 38 qualified venture capital contributions to the CFC, as determined by au-  
 39 dit, the CFC, prior to any additional distributions, shall pay to the state  
 40 treasurer's office 10% of the proportion of the distribution in excess of  
 41 such amount.

42 (e) Documents and other materials submitted by CFC's or by busi-  
 43 nesses for purposes of authorization or original certification or the con-

or the fair value of its assets plus any prior qualified and liquidating distributions which equal or exceed 110% of its certified capital. In addition, to the extent that marketable securities have been received in liquidation of a qualified venture capital investment, such securities may be distributed as liquidating distributions. Notwithstanding any other provisions of this act, cash liquidating distributions are permitted solely for the purpose of providing funds to investors to pay income taxes attributable to earnings of the CFC.

1 tinuance of certification as a CFC shall not be public records if it is  
2 determined by the secretary that disclosure of such information would  
3 compromise trade secrets of qualified Kansas businesses unless otherwise  
4 specified in this act.

5 (f) Each CFC shall report the following to the secretary:

6 (1) Within 90 days of the close of the CFC's fiscal year, annual au-  
7 dited financial statements. The audit shall address the methods of oper-  
8 ation and conduct of business of the CFC to determine if the CFC is  
9 complying with the statutes and program rules and that the funds received  
10 by the CFC have been invested in accordance with the time limits pro-  
11 vided by this act.

12 (2) At the end of each quarter, that no more than 20% of the assets  
13 of a CFC shall be invested in a single qualified Kansas business at any  
14 one time unless the CFC can demonstrate that a greater percentage in a  
15 single qualified Kansas business at any one time is the result of losses  
16 suffered by the CFC in other qualified venture capital investments.

17 (g) Any material related to the sale of ownership in a CFC or soliciting  
18 investment in a CFC shall include the following statement: "By author-  
19 izing or certifying a certified capital formation company, the State of Kan-  
20 sas does not endorse the quality of management or the potential for earn-  
21 ings of a particular company. The use of the word "certified" or  
22 "authorized" in an offering does not constitute a recommendation or en-  
23 dorsement of an investment by the Kansas Securities Commission or any  
24 other State Official."

25 (h) The secretary may establish reasonable initial filing fees for ap-  
26 plications for authorization and certification pursuant to this act and may  
27 also establish an annual nonrefundable fee for CFC's seeking continued  
28 certification.

29 Sec. 6. (a) To ensure that no qualified venture capital investment or  
30 investor's certified capital investment has been made in violation of this  
31 act, the secretary shall conduct an annual review of each CFC to deter-  
32 mine if the CFC is complying with the requirements of certification. The  
33 costs of the annual review shall be paid by each CFC according to a  
34 reasonable fee schedule adopted by the secretary.

35 (b) Any material violation of this act by a CFC shall be grounds for  
36 decertification under this section. If the secretary determines that a CFC  
37 is not in compliance with the requirements for continuing certification,  
38 the secretary, by written notice, shall inform the officers of the CFC and  
39 the board of directors, managers, trustees or general partners that they  
40 shall be decertified within 120 days from the date of mailing of the notice,  
41 unless they correct the deficiencies detailed in the notice and demon-  
42 strate to the secretary's satisfaction that the CFC is again in compliance  
43 with the requirements for certification as determined by the secretary.

by a CFC

greater of: (A) the original certified capital investment in the CFC; or (B) the original certified capital investment plus the amount equal to the net gains, losses, income and expenses realized by the CFC at such time