

MINUTES OF THE SENATE COMMERCE COMMITTEE.

The meeting was called to order by Chairperson Karin Brownlee at 8:30 a.m. on January 15, 2003 in Room 123-S of the Capitol.

All members were present except:

Committee staff present: April Holman, Legislative Research Department  
Debra Hollon, Legislative Research Department  
Norman Furse, Revisor of Statutes  
Mitch Rice, Revisor of Statutes  
Jodie Anspaugh, Secretary

Conferees appearing before the committee: April Holman, Legislative Research Department

Others attending: See attached list.

Chairperson Brownlee welcomed the committee and staff to the 2003 session. She welcomed the newest member of the committee, Senator Bill Bunten. She also noted the addition of a new committee secretary, Jodie Anspaugh, and a new member from the Revisor of Statutes, Mitch Rice. She also welcomed Norman Furse, April Holman, and Deb Hollon. Chairperson Brownlee led a discussion of what goals committee members have for the committee this session. She distributed the Senate Commerce Committee Mission Statement (Attachment 1). Chairperson Brownlee gave an overview of the accomplishments of the committee in the 2002 session.

April Holman from the Legislative Research Department gave an overview of "Reports of the Joint Committee on Economic Development to the 2003 Kansas Legislature" (Attachment 2). Following are the nine topics covered by the joint committee:

- Status of Rural Development Programs: The Committee recognizes that the key to rural economic development is local leadership such as that brought about by the Enterprise Facilitation Program and that the program's intent is the self-sufficiency of the community.
- Interlocal Cooperatives and Competition with Private Business: The Committee did not reach consensus on this topic. The Committee does recommend that the education committees of both houses review the activities of the Kansas Education Center at Greenbush in regard to the sale of computer software services.
- Workplace Safety: The Committee expressed concern with the costs of initiating an OSHA type program since the costs could be detrimental to the financial situation in Kansas.
- Unemployment Compensation: The Committee has concluded that, since the Employment Security Advisory Council has offered no recommendations after a series of meetings on this issue, the Committee will make no recommendations at this time.
- Tourism Funding: The Committee urges the new administration to develop a long-term plan to strengthen the efforts of the Division of Travel and Tourism Development with a priority on additional funding for tourism advertising.
- Venture Capital: The Joint Committee expresses its disappointment on the lack of progress in the implementation of the Certified Capital Formation Company Act and requests that the Kansas Department of Commerce and Housing provide a status report on the first day of the 2003 Legislative Session to the Senate Commerce and Ways and Means Committees and the House New Economy and Appropriations Committees.

CONTINUATION SHEET

MINUTES OF THE SENATE COMMERCE COMMITTEE at 8:30 a.m. on January 15, 2003 in Room 123-S of the Capitol.

- **Broadband Deployment:** The Committee concludes that broadband is of vital importance to economic development and that the 2003 Session of the Legislature should continue to examine ways to encourage consumer driven investment in broadband throughout the state.
- **Kansas Business Tax Structure and the Creation of a Kansas Business Incentive Program (SB 617):** The Committee recognizes the potential benefits of using a matrix system to streamline incentive programs to induce companies to locate in Kansas.
- **Multi-Dwelling Unit Issues Relating to Cable Communications:** The Committee urges the Legislature to request an Attorney General's opinion as to whether KSA 58-2553 would prohibit the creation of an exclusive easement provision for multi-dwelling unit access to communications or cable television providers.

The meeting was adjourned at 9:30 a.m.

The next meeting is scheduled for January 16, 2003 at 8:30 a.m.

SENATE COMMERCE COMMITTEE

GUEST LIST

DATE: Wednesday, Jan. 15, 2003

NAME	REPRESENTING
Kevin Bazzone	Hein law Firm
Andy Shaw	Kearney & Assoc. Inc
Patricia R. Hubbell	SBC
Denny Koch	SBC
John Peterson	Ks Governmental Consulting
Christy Caldwell	Iowa Topeka Chamber of Comm
Bernie Koch	Wichita Area Chamber of Comm
Terry Leatherman	KCEI
Mike Mervay	Spricot
Sandy Braden	Coches, Braden, Barber
Rae Anne Davis	KIDOLK
Barb Coxall	KTLA

## Senate Commerce Committee Mission Statement

We recognize that economic development on a state wide basis is a vital ingredient for our future and we will encourage a comprehensive long-range plan for increasing the economic viability of Kansas. We will also help foster, promote, and improve the overall business climate of the state.

### One Year Goals:

- Evaluate technological jobs in the state. Provide incentives for a better job market in this field.
- Implement KAN-ED
- Implement E-911
- Evaluate a tourism initiative.

### Two Year Goals:

- Give concentrated effort to those areas in the state which have a greater need for economic development.
- Study the structure of KDOC&H, Kansas, Inc., and K-TECH. Recommend structural changes.
- Pass a tourism initiative.
- Develop legislation that will provide a competitive telecommunications network for Kansas.

### Four Year Goals:

- Develop a comprehensive plan on workforce development.
- Evaluate the corporate tax structure in Kansas compared with other states and propose changes.
- Develop a plan to attract and retain "new economy" businesses.
- Develop and discover new sources of revenue for EDIF funds.

Reports of the  
Joint Committee on Economic Development  
to the  
2003 Kansas Legislature

**CHAIRPERSON:** Senator Nick Jordan

**VICE-CHAIRPERSON:** Representative William G. Mason

**OTHER MEMBERS:** Senators Jim Barone, Karin Brownlee, U. L. "Rip" Gooch, and Lynn Jenkins; Representatives Jerry Aday, Carol Edward Beggs, Mary Compton, Annie Kuether, Margaret Long, Vern Osborne, and Valdenia C. Winn

**STUDY TOPICS**

Status of Rural Development Programs (Kauffman Foundation and the Federal Reserve)

Interlocal Cooperatives and Competition with Private Business

Workplace Safety (HB 2868)

Unemployment Insurance Benefits

Tourism Funding

Review of Investigation of Kansas Venture Capital, Inc.

Broadband Deployment

Kansas Business Tax Structure and the Creation of a Kansas Business Incentive Program (SB 617)

Multi-Dwelling Unit (MDU) Issues Relating to Cable Communications

*December 2002*

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Senate Commerce Committee

1-15-03  
Attachment 2-1

# Joint Committee on Economic Development

## STATUS OF RURAL DEVELOPMENT PROGRAMS

### CONCLUSIONS AND RECOMMENDATIONS

The Committee recognizes that the key to rural economic development is local leadership such as that brought about by the Enterprise Facilitation Program and that the program's intent is the self-sufficiency of the community. The Committee encourages the Department of Commerce and Housing to utilize any other available funds for additional projects within this program. In addition, the Committee recommends that the agency report to the Senate Ways and Means and Commerce Committees and the House Appropriations and New Economy Committees on the status and funding of the Enterprise Facilitation Program.

*Proposed Legislation:* None

### BACKGROUND

The Joint Committee on Economic Development elected to examine the status of rural development programs in Kansas.

### COMMITTEE ACTIVITIES

At the Committee's November meeting, the Acting Secretary of the Department of Commerce and Housing provided an overview of the Enterprise Facilitation Program. This program was developed by the Sirolli Institute and promotes a grassroots, self-sufficient approach to developing entrepreneurial businesses in small communities. Six such projects have been funded in Kansas at \$200,000 each for initial expenditures using Community Development Block Grant funds. The program requires a \$100,000 match from the community.

The Committee also heard from three representatives of the Quad County

Enterprise Facilitation Group who discussed their organization and statistics. The program covers Chautauqua, Elk, Greenwood, and Woodson counties.

### CONCLUSIONS AND RECOMMENDATIONS

The Committee recognizes that the key to rural economic development is local leadership such as that brought about by the Enterprise Facilitation Program and that the program's intent is the self-sufficiency of the community. The Committee encourages the Department of Commerce and Housing to utilize any other available funds for additional projects within this program. In addition, the Committee recommends that the agency report to the Senate Ways and Means and Commerce Committees and the House Appropriations and New Economy Committees on the status and funding of the Enterprise Facilitation Program.

# INTERLOCAL COOPERATIVES AND COMPETITION WITH PRIVATE BUSINESS

## CONCLUSIONS AND RECOMMENDATIONS

The Committee did not reach consensus on this topic. The Committee does recommend that the education committees of both houses review the activities of the Kansas Education Center at Greenbush in regard to the sale of computer software services. Further, the Committee recommends that the appropriate standing committees review the impact of government sponsored competition with the private sector.

**Proposed Legislation:** None

## BACKGROUND

The topic was suggested by the Chairman of the Senate Education Committee, Senator Dwayne Umbarger, as a result of an amendment added to 2002 HB 2831 by the Senate Committee of the Whole. The amendment would have amended the Kansas Interlocal Cooperation Act to provide that an interlocal agreement shall not authorize or enable a public agency to purchase a private business concern. The amendment was deleted by the Conference Committee on HB 2831 with the understanding that an interim study of the subject would be requested.

The proposed amendment to HB 2831 came about as a result of Attorney General Opinion No. 2002-10. The opinion stated that an education service center created by an interlocal cooperative agreement of several school districts, had the power to provide services to school districts, regardless of whether the school districts were party to the interlocal cooperative agreement, and had the power to sell the same or similar services and products that are sold by private businesses. Further, these services and products may be sold to school districts located outside the State of Kansas.

The entity created by the interlocal agreement that sparked the request for Attorney General Opinion No. 2002-10 was the Southeast Kansas Education Service Center at Greenbush, Kansas. The Center recently purchased a private business, the Management Advisory Computer System (MACS) company. The company had provided technical support and software accounting services for a number of school districts that use Apple computers. The Center, a not-for-profit corporation, purchased this private business and now offers the same technical support and software services formerly provided by private business to school districts within and outside the State of Kansas.

## COMMITTEE ACTIVITIES

The Joint Committee on Economic Development held a public hearing in August on the issue of Interlocal Cooperatives and Competition with Private Business.

Conferees at the public hearing included the following: an assistant Attorney General, representatives of the Kansas Association of Counties, the League of Kansas Municipalities, the Kansas Association of School Boards, a

representative of the Southeast Kansas Education Service Center at Greenbush, and five superintendents of unified school districts, *i.e.*, USD 475 (Geary County), USD 250 (Pittsburg), USD 458 (Basehor-Linwood), USD 233 (Olathe), and USD 266 (Maize).

Other conferees included representatives of Data Team Systems, Inc., of Lawrence, a private business corporation; the National Federation of Independent Businesses (NIFB); and the Wichita Independent Business Association.

The representatives of the service center, the school districts, and the local government statewide associations opposed any change in the Kansas Intergovernmental Cooperation Act as well as the enactment of any other state law that would limit or prohibit a local unit of government from engaging in activities that are performed by private businesses. Conferees argued that it would be very difficult to draft a law that would not severely restrict the ways local units of government now do their business. Local governments often make a decision to provide a service or product that a private entity may provide with the motivation to save money, provide a service in a more efficient manner, or for some other valid reason. On the other hand, there are a number of local governments that have contracted with private business to perform functions that have traditionally been considered public services such as the management of schools and the operation of prisons. As a result, these local government officials said that it would be very difficult to draw a clear distinction between what services and products local governments should provide and what private entities

should provide.

The representatives of the Lawrence private business and the various private business associations favored enactment of a state law restricting the ability of governmental entities from engaging in the activities or the sale of goods or services that are provided by the private business sector. Business representatives said it was patently unfair for a local government to engage in the provision or sale of services or products in competition with a private entity since the public agency often enjoys an unfair competitive advantage. For example, public entities are exempt from paying various taxes including property and income taxes. Local governments often have an inside track on attending meetings that private entities are not allowed to attend and have a number of other advantages and discounts that private entities do not enjoy.

## CONCLUSIONS AND RECOMMENDATIONS

The Joint Committee was not able to reach consensus on this topic. Some members of the Committee expressed concern about the marketing of products and services outside the membership of interlocal cooperatives.

The Joint Committee recommends that standing education committees of both houses review the activities of the Southeast Kansas Education Service Center at Greenbush in regard to the sale of software computer services. Further, the Joint Committee recommends that the appropriate standing committees of the Kansas Legislature review the impact of government sponsored competition with the private sector.



## WORKPLACE SAFETY

### CONCLUSIONS AND RECOMMENDATIONS

The Committee expressed concern with the costs of initiating an OSHA type program since the costs could be detrimental to the financial situation in Kansas.

**Proposed Legislation:** None

### BACKGROUND

The Chairman of the House Business, Commerce, and Labor Committee requested an interim examination of 2002 HB 2868, which would have established a state Occupational Safety Plan. Specifically, the purpose of the bill was:

- To preserve human resources by providing for the safety and health of workers; and
- To provide a coordinated state plan to implement, establish, and enforce occupational safety and health standards as or more effective as the standards under the federal Occupational Safety and Health Act (OSHA).

The sponsor of the bill testified regarding HB 2868 and the reason it was drafted and introduced. According to the conferee there are advantages to a state Occupational Safety Plan in effect or opposed to the federal OSHA. According to federal law, states can opt out of OSHA.

Advantages of the bill would include the following benefits:

- Resources could be focused more efficiently in areas which directly impact Kansas (grain handling

industry, airplane manufacturing, and the oil and gas industry);

- Fines and penalties would remain in Kansas; and
- Appeals would be made through the state administrative procedures.

The fiscal note on the program would be approximately \$1.2 million to \$1.5 million.

The Director of the Division of Workers Compensation stated the federal OSHA encourages states to develop their own OSHA programs including enforcement. A review of how some states have structured their programs was presented.

The supervisor of Industrial Safety and Health in Kansas stated that the state OSHA plan would give Kansas the opportunity to become a leader in the industrial area and to focus resources where they can best benefit the state.

Representing Venture Corporation, a conferee spoke in favor of a state OSHA plan. Advantages cited included the federal funding of part of the costs, retaining fines in the state, and reduction of workers compensation rates.

A delegate from the Kansas Trial

Lawyers Association (KTLA) expressed concern with the state OSHA plan. Further, the conferee reviewed a report entitled "Workers Compensation Program in Kansas," prepared by the Kansas Coalition for Workplace Safety, released in 2000. According to the report Kansas has a high rate of occupational injuries. The KTLA spokesperson encouraged the Legislature to explore all options for improving workplace safety.

The House Democratic Leader remarked that HB 2888, and not HB 2868, would create a task force on workplace safety which is the route he prefers to address the issue of workplace safety.

The conferee also cited a recent study by the United Health Foundation and reviewed the incidents of occupational fatalities in the United States. The study ranked the states on a scale of 1 to 50,

with 1 being the best and safest and 50 being the worst. Kansas ranked 40<sup>th</sup> in on-the-job deaths. The conferee indicated there is a need for legislation to deal with this problem.

The fiscal note on HB 2888 cannot be determined since the number of meetings required by the bill is unknown and the actual composition of the Task Force is unknown. The cost for a two-day meeting for six members would be approximately \$4,435.

#### CONCLUSIONS AND RECOMMENDATIONS

The Committee expressed concern with the costs of initiating an OSHA type program since the costs could be detrimental to the financial situation in Kansas.

### UNEMPLOYMENT COMPENSATION

#### CONCLUSIONS AND RECOMMENDATIONS

The Committee has concluded that, since the Employment Security Advisory Council has offered no recommendations after a series of meetings on this issue, the Committee will make no recommendations at this time.

**Proposed Legislation:** None

#### BACKGROUND

After the 2002 Legislative Session, the Chairman of the House Business, Commerce, and Labor Committee asked for a 2002 interim study of unemployment insurance benefits. The request encompassed a review of the following issues:

- The Unemployment Fund balance which will include the status of the Fund after the moratorium on contributions ended;
- The number of unemployed workers in Kansas;
- The adequacy of unemployment benefits in Kansas, both in amount

and duration of time;

- The issue of an extension of time to receive benefits; and
- The status of the computer system to assist unemployed workers.

The topic was assigned to the 2002 Joint Committee on Economic Development.

### COMMITTEE ACTIVITY

The Chairman of the House Business, Commerce, and Labor Committee addressed the interim committee to stress the need for a serious examination of the unemployment situation including benefits, duration of benefits, end of moratorium, as well as other issues in Kansas. The Secretary of the Kansas Department of Human Resources (KDHR) which handles employment matters, reviewed the situation in his introductory remarks. According to the Secretary the current Kansas unemployment rate is in better shape than the national rate. The Kansas rate has gone from 3.7 percent in 2000 to 4.6 percent in June 2002. The national rate is 5.9 percent. Regarding the tax moratorium the Secretary indicated that during the five-year time frame, 1995 to 1999, during which employers did not have to pay taxes, which are paid on the first \$8,000 earned by Kansas employees, the Kansas Unemployment Insurance Trust Fund went from the prior \$724 million balance to the current level of \$505 million. Included in the \$505 million balance is \$78 million in federal funding from the Reed Act distributions. Federal Reed Act moneys are designed to help states with their unemployment programs. The drop in Fund moneys has been a cause for concern.

According to the Secretary the Fund is approaching a perilously low level. In order to avoid insolvency, such as is close to happening in the State of Missouri, action needs to be taken. Although by 2003 tax rate contributions by employers will be back at approximately the same level as before the moratorium went into effect, the increase will not be enough to return the Fund to an adequate amount. The Employment Security Advisory Council (ESAC) is in the process of formulating recommendations on various unemployment matters. Since the Fund is at such a low level, KDHR has requested the Legislature to allocate \$4 million (5 percent) of the Reed Act moneys to cover unemployment benefit operational costs, call center vacancies, and appeals positions. According to the conferee, the need is very real especially for services to employers and unemployed workers during the November and December 2002 winter layoffs. The Secretary requests the Committee to support the expenditure of \$4 million from the Reed Act distribution and is considering asking the State Finance Council to approve expenditure of the Reed Act funds.

Another suggestion is for the Committee to discuss and work with KDHR about the many possible uses of the Reed Act distribution.

Staff members of KDHR provided additional detailed information to the Committee. The Director of Labor Market Information Services spoke to the topic of significant layoffs within the state, including the aviation industry. Such layoffs have placed major demands on the Fund. In 2001 a total of \$240,829,000 was paid in unemployment benefits while during the first six months of 2002

a total of \$189.6 million was paid in benefit payments. The suggestion was made that the Legislature may want to consider a tax rate increase on a phase-in basis.

The KDHR Chief of Benefits indicated that the mission of his section is to pay benefits timely and accurately. To ensure timely and accurate payments, there are three call centers, internet access, and an administrative department at the central office in addition to 130 full-time and part-time staff involved. A history of the Kansas Employment Security Law dating from 1937 was presented. The law is designed to provide income during limited unemployment for those individuals who are laid off through no fault of their own. Benefits are paid for the usual 26 weeks plus a 13 week extension until the worker is recalled or finds other work.

Currently, the maximum weekly benefit amount is \$345 while the minimum is \$86. Last year the amounts were \$333 and \$83, respectively. The average weekly benefit amount during FY 2002 was \$270 and the average duration was 15 weeks.

An extensive review of how the call centers through which claims are processed was provided. The current setup represents a much more streamlined procedure than in the past. With the updated process a claimant can complete a claim from home in approximately one-half hour or less. Other methods of processing can be used for employees facing a permanent lay off from their jobs. Some meetings are held at the employers worksite. A Worker

Adjustment and Retraining Notification Act (WARN) notice for 50 or more employees to be laid off will trigger a Rapid Response meeting. Electronic mass filings in cooperation with employers also can be used. Another alternative available during periods of economic down times is the concept of shared work plans available for employers who have their own experience rating and are not negative account employers. Under such a plan an employee is subsidized with unemployment payments.

The Committee also heard from the House sponsor of HB 2728 which was introduced during the 2002 Session. Provisions contained in HB 2728 would raise the unemployment maximum and minimum payment amounts for laid off workers. A conferee from the Kansas Chamber of Commerce and Industry addressed the unique structure of the unemployment compensation system and pledged support for measures to assure a healthy Fund balance. In addition the representative from the Kansas AFL-CIO who is also a member of ESAC discussed the history of ESAC and indicated the problem of a healthy Fund balance is a perennial one. According to the conferee, recommendations of the ESAC should be forthcoming in the near future.

## CONCLUSIONS AND RECOMMENDATIONS

The Committee has concluded that, since the Employment Security Advisory Council has offered no recommendations after a series of meetings on this issue, the Committee will make no recommendations at this time.

## TOURISM FUNDING

### CONCLUSIONS AND RECOMMENDATIONS

The Committee strongly supports the travel and tourism industry and recognizes its role in the economic development of communities of all sizes. The Committee urges the new administration to develop a long-term plan to strengthen the efforts of the Division of Travel and Tourism Development with a priority on additional funding for tourism advertising. Finally, the Committee supports the agency's proposed use of the proceeds from the sale of the Olathe Travel Information Center to cover capital expenditures for two new travel information centers and provide for a one-time increase in tourism advertising.

*Proposed Legislation:* None

### BACKGROUND

The Joint Committee chose to study the topic of state funding for tourism in Kansas.

### COMMITTEE ACTIVITIES

At its November meeting, the Director of the Travel and Tourism Development Division of the Department of Commerce and Housing presented testimony on various aspects of the travel and tourism industry both in Kansas and nationwide. During discussion, the conferee noted that the present tourism advertising budget is \$300,000 which is the lowest in the nation. Also, the proceeds of \$926,000 from the sale of the Olathe Travel Information Center are to remain within the agency. The agency's submitted budget expenditures from these funds are \$100,000 for the interior fixtures of each of the new travel information centers in Belle Plaine and in Southwest Kansas as well as \$726,000 used to update brochures, assist with advertising for the Lewis and Clark commemoration, and other one-time advertising efforts.

The Committee also received testimony from representatives of the Travel Industry Association of Kansas, the Kansas Sampler Foundation, and the Kansas Restaurant and Hospitality Association encouraging additional state funding for tourism. A representative of Cabela's provided the Committee with an update on the company's store near the Kansas Speedway in Kansas City.

### CONCLUSIONS AND RECOMMENDATIONS

The Committee strongly supports the travel and tourism industry and recognizes its role in the economic development of communities of all sizes. The Committee urges the new administration to develop a long-term plan to strengthen the efforts of the Division of Travel and Tourism Development with a priority on additional funding for tourism advertising. Finally, the Committee supports the agency's proposed use of the proceeds from the sale of the Olathe Travel Information Center to cover capital expenditures for two new travel information centers and provide for a one-time increase in tourism advertising.

## VENTURE CAPITAL

### CONCLUSIONS AND RECOMMENDATIONS

The Joint Committee expresses its disappointment on the lack of progress in the implementation of the Certified Capital Formation Company Act and strongly supports moving forward in this area as quickly as possible. With this in mind, the Committee requests that the Kansas Department of Commerce and Housing provide a status report on the first day of the 2003 Legislative Session to the Senate Commerce and Ways and Means Committees and the House New Economy and Appropriations Committees. If there has not been sufficient progress made at that point, the Committee recommends that the Legislature seek alternatives to assist in the early implementation of the bill.

**Proposed Legislation:** None

### BACKGROUND

The Committee's study of the topic of venture capital encompassed two areas: the Kansas Securities Commissioner's investigation of Kansas Venture Capital Inc. (KVIC) and the implementation of the Certified Capital Formation Company Act (2001 HB 2505).

The Joint Committee on Economic Development elected to conduct a review of the investigation of KVIC. This investigation was conducted by the Kansas Securities Commissioner during the spring of 2002 at the direction of the Governor. The investigation was instigated by a wrongful termination lawsuit filed by two former employees of KVIC which alleged that the State may have been misled in the redemption of preferred stock in the company.

In addition, the Joint Committee chose to study the implementation by the Kansas Department of Commerce and Housing (KDOCH) of 2001 HB 2505, the Certified Capital Formation Company Act. The legislation charged the Department with responsibilities including:

- Approving fund managers on the basis of experience and character;
- Approving principals of the Capital Formation Company (CFC) based on an affirmative background report by the Securities Commissioner;
- Authorizing, certifying, and decertifying CFCs based on specified criteria;
- Requiring annual financial audits from CFCs;
- Conducting an annual compliance review of each CFC; and
- Preparing an annual report to the Governor and Legislature.

### COMMITTEE ACTIVITIES

At the Committee's October meeting, Securities Commissioner David Brant presented his report on KVIC and discussed the investigation into the firm. The Commissioner's report states that it appeared as though state leaders were aware prior to the stock redemption that

there was an anticipated increase in the book value of the stock due to the expected profits from the sale of an undisclosed company. Executive and legislative officials chose to redeem the stock at the lower price per share.

Also at its October meeting, the Committee reviewed the implementation by KDOCH of the Certified Capital Formation Company Act (2001 HB 2505) which was passed by the 2002 Legislature. A representative from Kansas, Inc. presented testimony to the Committee on the need for the implementation of the bill and the creation of a Technical Advisory Council to assist with the implementation. The Acting Secretary of KDOCH discussed some of the difficulties encountered by the agency including a lack of funding and staff expertise. The Acting Secretary also noted that the signing of any contracts for program management and the determination of a final

implementation timeframe would best be left to the new administration.

## CONCLUSIONS AND RECOMMENDATIONS

The Joint Committee expresses its disappointment on the lack of progress in the implementation of the Certified Capital Formation Company Act and strongly supports moving forward in this area as quickly as possible. With this in mind, the Committee requests that the Kansas Department of Commerce and Housing provide a status report on the first day of the 2003 Legislative Session to the Senate Commerce and Ways and Means Committees and the House New Economy and Appropriations Committees. If there has not been sufficient progress made at that point, the Committee recommends that the Legislature seek alternatives to assist in the early implementation of the bill.

## BROADBAND DEPLOYMENT

### CONCLUSIONS AND RECOMMENDATIONS

The Committee concludes that broadband is of vital importance to economic development and that the 2003 Session of the Legislature should continue to examine ways to encourage consumer driven investment in broadband throughout the state.

The Committee also concludes that further study and legislative action in the area of broadband deployment may be necessary in the future. To this end, the Committee has identified issues which are central to the broadband deployment debate: the economic benefits of broadband, the demand for broadband access, and the supply of broadband services.

*Proposed Legislation:* None

### BACKGROUND

The Joint Committee on Economic Development is permitted to select its

own topics of study in addition to those which may be assigned to the Committee by the Legislative Coordinating Council. The topic of Broadband Deployment was selected by the Committee, and the focus of the study was placed specifically on the impact of broadband deployment on economic development.

**Definition of Broadband.** While traditional dial-up data access provides speeds of less than 56 kilobits per second (kbps), the Federal Communications Commission (FCC) defines broadband technology as that technology providing for speeds of at least 200 kbps in at least one direction. The term "Broadband" can be further broken down into "advanced services" and "high-speed access services." Section 706(b) of the Federal Telecommunications Act of 1996, describes advanced services as "high-speed, switched, broadband telecommunications capability that enables users to originate and receive high-quality voice, data, graphics and video telecommunications using any technology." According to the FCC, the distinction between advanced service and high-speed service is that in order to be considered advanced service, there must be services and facilities with an upstream (customer-to-provider) and downstream (provider-to-customer) transmission speed of more than 200 kbps, while high-speed service would be at the same speed but the transmission capability would only need to be in one direction.

Broadband services can be provided over wireline facilities such as digital subscriber line (DSL), wireless third Generation (3G) facilities, cable facilities, and satellite facilities.

**The KAN-ED Network.** The KAN-ED

Network, which was created by the Legislature in 2001, is a broadband technology-based network to which schools (including public and private Kansas postsecondary institutions and public and private K-12 schools), libraries, and hospitals may connect for broadband Internet access and intranet access for distance learning. Access to the network must be provided to not less than 75 percent of all participating schools, libraries, and hospitals by July 1, 2004. The Kansas Board of Regents has responsibility for governance of the network and for contracting for the creation, operation, and maintenance of the network. The implementation of KAN-ED has proceeded steadily since its inception in 2001, with a KAN-ED director and operations manager being named and invitations to join the KAN-ED Consortium have been sent to schools, libraries, and hospitals in the state.

**Status of Broadband Deployment in Kansas.** Kansas has an Internet usage rate which is slightly higher than the national average. According to the U.S. Department of Commerce, in 2001 between 55 percent and 61 percent of Kansans used the Internet, while 54 percent of the nation as a whole used the Internet. However, in December 2001, 44 percent of Kansas zip codes did not have a provider of high-speed access lines. Census data reported in December 2000, indicate that approximately 5 percent of Kansans subscribe to broadband services.

According to the FCC, there were a total of 17 broadband providers in Kansas in December 2001. This total includes all providers with at least 250 lines in service at speeds meeting the definition of broadband service. These providers had 125,963 high-speed access lines in



December 2001, of which 23,564 used Asymmetric Digital Subscriber Line (ADSL) technology, 94,047 used coaxial cable technology and 8,532 used other technologies. (The Kansas Corporation Commission (KCC) has identified nearly 20,000 DSL lines in addition to those identified by the FCC).

### COMMITTEE ACTIVITIES

The Committee held a hearing on the topic at the September meeting. At this time, various conferees provided testimony.

A representative of the KCC, provided information on broadband deployment and its effect on economic development. Her testimony included basic background information regarding broadband service and narrating the differences between advanced and high-speed service. She reviewed federal legislation and state and federal regulatory proceedings that may have an effect/impact on deployment of Broadband. She spoke about the Rural Utility Service Programs and summarized with a status report regarding broadband deployment in Kansas. She shared with the Committee the belief that high-speed access will make distance learning and telemedicine programs more effective as well as provide access to new entertainment opportunities and additional services.

A representative of the United States Department of Commerce presented testimony entitled "Broadband: The Sky's The Limit and It's Not Falling (Yet)." He described the deployment of broadband and its potential on the national, state, and local levels, emphasizing that the issue is not one of supply but instead one of demand for broadband services. He focused on the following themes.

- High speed Internet access holds extraordinary promise for our economy and our society.
- While current generations of broadband are deploying robustly, much work remains to deploy a sufficiently robust network and to encourage its widespread usage.
- There are steps government and private participants can take to promote broadband deployment and encourage its usage. For state and local governments, he recommended prioritizing bandwidth when considering issues such as rights-of-way, taxes and application fees, tower siting, zoning, building and construction codes, building access, franchise agreements, historic preservation, and environmental protections. He also suggested that leaders consider ways to aggregate demand to incent carrier deployment.

A representative of the American Internet Service Provider (ISP) Association, gave a presentation entitled, "A Positive Competitive Broadband Agenda for the Nation." In her presentation, she provided the history of the American ISP Association and spoke about the challenges associated with supply/demand sides of broadband deployment, results from a recent survey of 1,000 U.S. voters, data on percent of U.S. households with broadband availability, consumer rate verses take rate, drivers of broadband demand, five promising areas for immediate impact, effect of increased prices as competition falters, changing patterns of consumers, broadband vision, and a national broadband agenda.

A representative of the Southern Kansas Telephone Company, and the Kansas Rural Independent Telephone companies, spoke about the importance of broadband deployment for Kansas. He reviewed the impact of the 1996 Kansas Telecommunications Act, and the 1996 Federal Telecommunications Act on independent telecommunication companies. Under the mandate of that act his companies have deployed broadband capable facilities over the last ten years. He suggested that they would need ongoing reasonable support to meet the mandate of comparable services at comparable rates.

A representative of the Kansas Chamber of Commerce and Industry (KCCI), presented testimony regarding the business community's interest in broadband deployment. He told the Committee that KCCI believes high-speed Internet technology is critical as an economic developer to attract new industry and retain existing business. He submitted that the core policy question is what climate will cause Kansas to benefit from the constant evolution of communication technology.

A representative of Southwestern Bell Communications (SBC) gave a presentation on the topic of broadband technology and its importance to economic development in Kansas. The presentation covered four key points:

- Broadband technology is vital to the economic development of Kansas;
- Expanding broadband deployment in Kansas can revive the state's telecommunications industry and technology;
- More broadband access will help

Kansas retain and attract business; and

- SBC has made significant investments in Kansas in the past.

He told the Committee that SBC is willing to continue to make a significant investment to extend broadband access across Kansas at no cost to the state. However, SBC asked that their investment be protected by fair broadband regulation. He stated that if a company invests in the technology, that company should not be punished by having to turn the network over to competitors. He recommended that the Legislature consider adopting regulatory reform, with the goal being to apply the same state regulation to all high speed Internet service providers, and allow the broadband market to regulate itself through competition. When asked about SBC's future technology plans in Kansas, he stated that unless there are regulatory reforms, SBC does not plan to expand services and facilities beyond its current commitments.

A representative of AT&T testified in support of a proactive and competitively neutral broadband policy. He briefly reviewed the history of the 1996 Telecom Regulatory Act, stating that its purpose was to establish local competition in the marketplace. He gave a historical prospective of when AT&T was forced to share its network with competitors to insure that ubiquitous service would be available for all competitors. He noted that the 1996 Act provides three ways by which a new competitor can get into the marketplace; build their own network, re-sell incumbent services, or purchase unbundled network elements. The Act provides pricing for unbundled network elements and is set by the Commission and included in that price is a rate of

return. He stated that the issue carries so many subtle ramifications that it is incumbent on the Legislature to listen to all the testimony before moving forward with legislation.

A representative of Sprint Communications gave a presentation on the costs and benefits of broadband deployment. He noted that currently market forces determine broadband deployment in a majority of markets, although he questioned whether the speed of deployment would be sufficient in this model. He reviewed data on usage in urban and rural areas stating that there have been significant increases in the past two years. He gave an overview of the reasons for supply inconsistency, including prioritization on the part of providers; limited capital budgets, including costs of network upgrades; inability to generate "critical mass" to justify expenditure on equipment; and physical and technological constraints. He suggested the following actions for policymakers:

- Pursue policies that work with the market mechanism, not against it or in place of it;
- Work with suppliers to create incentives making provision cost effective;
- Use demand-aggregation to provide the incentive for deployment; and
- Use specific, targeted policy tools to encourage supply where demand exists and currently is unmet.

A representative of Everest Connections urged the Legislature not to enact legislation that advances the interest of one company to the detriment

of other companies, stating that legislation is not likely to result in the availability of advanced services to customers who reside at distances well outside the city limits.

A representative of Pixius Communications, gave a presentation on the economic benefits and challenges of broadband. He told the Committee that the high-speed, broadband networks of the 21<sup>st</sup> century are essential to attracting and retaining businesses, providing state-of-the-art healthcare, and offering children the benefits of distance learning and the Internet. He recommended that a cooperative effort between the Kansas Legislature and the KCC is required to encourage bandwidth providers to provide services to ISPs at a wholesale level, grant restricted CLEC status to ISPs, provide tax relief from telecommunications taxes, and grant investment tax credits.

## CONCLUSIONS AND RECOMMENDATIONS

The Committee concludes that broadband is of vital importance to economic development and that the 2003 Session of the Legislature should continue to examine ways to encourage consumer driven investment in broadband throughout the state.

The Committee also concludes that further study, inquiry, and legislative action in the area of broadband deployment may be necessary in the future. To this end, the Committee has identified the following issues which are central to the broadband deployment debate: the economic benefits of broadband, the demand for broadband access, and the supply of broadband services.

**Economic Benefits of Broadband Deployment.** Although the Committee received a general sense of the importance of broadband services to economic development, further information as to the specific benefits of broadband deployment would provide the opportunity for future legislatures to weigh the urgency for legislative action regarding broadband deployment in Kansas.

**Demand for Broadband Access.** The demand for broadband access plays a key role in broadband deployment. Both the business community and government can take actions to stimulate the demand for broadband. Some issues relative to the demand for broadband include:

- Quality of content available using broadband technology.
- Perception of return on investment for broadband investments.
- Understanding how to implement broadband business solutions.
- Use of broadband in the government sector, such as in the areas of education and health care, to stimulate demand for broadband. This could include maximizing the potential of KAN-ED.
- Aggregating demand for broadband through community collaboration to attract investments in broadband infrastructure.
- Importance of price in creating a demand for broadband. When price goes down, the "take-rate" for broadband goes up.

**Supply of Broadband Services.** The Committee's discussion of the supply side of broadband services focused, in large part, on the issue of government regulation. Specifically, the issue centered around the possibility that, under the 1996 Telecommunications Act, SBC, as the incumbent telephone provider, will be required to open up their broadband network for the use of competitors as it has been required to open up its traditional telephone network. Because broadband services as we know them today were not available in 1996 at the time of the landmark telecommunications legislation, there is some question as to whether intramodal competition is needed in addition to intermodal competition for broadband carriers. In other words, it is unclear whether it is sufficient under the law that broadband competition exists among the various technologies or if the law will be interpreted to require competition in the provision of broadband services using telephone technology.

The question of intramodal competition currently is being decided by the KCC and FCC and their decisions will ultimately impact any legislation that is proposed in this area.

The Legislature, after consultation with the KCC, could adopt legislation clarifying that broadband networks of the incumbent telephone provider would not be opened up to competitors. However, there would be implications for voice competition that would need to be addressed. The voice network and the broadband network are intertwined and may someday be the same facility and thus any language limiting regulatory authority would have to be carefully crafted.

Other issues that arise in the area of the supply of broadband services are as follows:

- The possibility of subsidizing broadband deployment using moneys

from the Kansas Universal Service Fund.

- The possibility of offering tax

incentives for broadband use or deployment.

- Minimizing governmental barriers and impediments to broadband deployment.

- The rate of reimbursement for use of lines belonging to the incumbent provider.

## **KANSAS BUSINESS TAX STRUCTURE AND THE CREATION OF A KANSAS BUSINESS INCENTIVE PROGRAM (SB 617)**

### **CONCLUSIONS AND RECOMMENDATIONS**

After hearings on the subject, the Committee recognizes the potential benefits of using a matrix system to streamline incentive programs to induce companies to locate in Kansas. The Committee notes that the proposal has potential. However, the Committee agrees that it would be appropriate to leave the decision as to whether to proceed on the matrix proposal to the new administration.

The Committee recommends that the appropriate Committees in the House and Senate further study the issue of the interpretation of a "qualified business facility investment" for purposes of the Kansas Enterprise Zone Act and the Kansas High Performance Incentive Program. The Committee also urges the parties to come to an agreement on the fiscal note so that the uncertainty can be resolved for business taxpayers.

***Proposed Legislation:*** None

### **BACKGROUND**

The Joint Committee on Economic Development is permitted to select its own topics of study in addition to those which may be assigned to the Committee by the Legislative Coordinating Council. The topic of the Kansas business tax structure and the creation of a Kansas Business Incentive Program was selected by the Committee, in response to concerns that Kansas needs a comprehensive business tax policy instead of a patchwork approach to

business tax and other incentives.

### **COMMITTEE ACTIVITIES**

The Committee held hearings on the topic at the October and November meetings. Among the conferees testifying before the Committee were representatives of the Institute for Public Policy and Business Research (IPPBR) of the University of Kansas, the Kansas Department of Commerce and Housing

(KDOCH), the Kansas Chamber of Commerce and Industry (KCCI), the Regional Development Association of East Central Kansas, the Greater Topeka Chamber of Commerce, the Kansas Tax Coalition, and the accounting firm of Allen, Gibbs and Houlik.

The conferees raised a variety of issues under the umbrella of the business tax structure and the creation of a Kansas Business Incentive Program. Their testimony may be summarized as follows:

The representative of IPPBR presented an overview of a report entitled, "Kansas Business Taxes and Costs: Perspectives on Competitiveness." In her presentation she focused on the tax rates and other business costs that most affect Kansas firms, the main business tax incentives for which Kansas firms may qualify and how they compare with those available elsewhere in the region, and the overall impact of the Kansas tax structure and of other Kansas business costs on the bottom line for a typical Kansas firm. She noted that, with the exception of the property tax, Kansas tax rates tend to be in the mid-range for the region while workers compensation costs in Kansas are slightly lower than the national average. It was noted that the Kansas property tax, particularly as applied to machinery and equipment, is the tax where Kansas most diverges from surrounding states, with the tax being higher in Kansas than in neighboring states. It also was noted that Kansas ranks in the mid-range for the region in the cost of labor and that Kansas offers a generous package of tax incentives for new and expanding firms and also provides generous sales tax exemptions.

The representative of KDOCH provided general information about

existing business incentives including the Kansas Economic Opportunity Initiatives Fund (KEOIF) and the Kansas Existing Industry Expansion Program (KEIEP) as well as an overview of workforce development programs offered in Kansas. He also discussed SB 617, from the 2002 Legislative Session, which would have created a matrix to more equitably distribute tax credits and create a system which is more incentive-based by connecting benefits more closely to the number and quality of jobs created.

Representatives of KCCI and the Regional Development Association of East Central Kansas emphasized the importance of having a competitive tax structure within the region and nationally. The Committee was given an example of a business that chose to locate in Nebraska instead of Kansas because the Nebraska business property tax rate is significantly lower.

Several of the conferees, including the representatives of the Greater Topeka Chamber of Commerce, the Kansas Tax Coalition, and the accounting firm of Allen, Gibbs and Houlik, urged the Committee to support legislation similar to HB 2988 and HB 2989 from the 2002 Legislative Session. The conferees acknowledged that funding would probably not be available in the upcoming year for HB 2988, which would allow job expansion and investment tax credits to be sold or transferred to a third party. However, the conferees contended that HB 2989 should not have a fiscal impact on the state because it would simply hold businesses harmless for a previous interpretation of accounting procedures relating to the definition of a "qualified business facility investment" for purposes of the Kansas Enterprise Zone Act and the Kansas High

Performance Incentive Program. Under the bill, tax credits provided for new investment would be netted against the depreciated book value of the old investment instead of the original purchase price of the equipment under the current interpretation by the Kansas Department of Revenue (KDOR). The bill also would protect those business taxpayers who have erroneously used this interpretation in the past. KDOR estimated the fiscal note on HB 2989 to be \$28.56 million in FY 2003 and \$1.68 million in FY 2004, and thereafter.

#### CONCLUSIONS AND RECOMMENDATIONS

After hearings on the subject, the Committee recognizes the potential benefits of using a matrix system to

streamline incentive programs to induce companies to locate in Kansas. The Committee notes that the proposal has potential. However, the Committee agrees that it would be appropriate to leave the decision as to whether to proceed on the matrix proposal to the new administration.

The Committee recommends that the appropriate Committees in the House and Senate further study the issue of the interpretation of a "qualified business facility investment" for purposes of the Kansas Enterprise Zone Act and the Kansas High Performance Incentive Program. The Committee also urges the parties to come to an agreement on the fiscal note so that the uncertainty can be resolved for business taxpayers.

### MULTI-DWELLING UNIT ISSUES RELATING TO CABLE COMMUNICATIONS

#### CONCLUSIONS AND RECOMMENDATIONS

The Committee acknowledges that the Legislature cannot interfere with current contractual agreements. However, the Committee urges the Legislature to request an Attorney General's opinion as to whether KSA 58-2553 would prohibit the creation of an exclusive easement provision for multi-dwelling unit access to communications or cable television providers. The Committee further urges the appropriate standing committees to respond accordingly based on the Attorney General's opinion.

*Proposed Legislation:* None

#### BACKGROUND

The Joint Committee on Economic Development is permitted to select its own topics of study in addition to those which may be assigned to the Committee by the Legislative Coordinating Council. The topic of multi-dwelling unit (MDU) issues relating to cable communications

was selected by the Committee.

This topic involves the access of cable companies to potential customers living in apartments or other MDUs. Specifically, the issue centers on access to MDU's whose owners have entered into exclusive easements with incumbent providers.

## COMMITTEE ACTIVITIES

The Committee held a hearing on the topic at the September meeting. At that time representatives of Everest Connections and WorldNet, L.L.C. provided testimony to the Committee. Their concerns can be summarized as follows.

**Access to Potential Customers in MDUs with Contractual Agreements with Incumbent Providers.** It was explained to the Committee that in order to provide cable communication service, the provider must have access to certain easements which are located on public property and on the private property occupied by the customer. When the customer is living in an apartment or other MDU, the provider must negotiate an agreement with the property owner to obtain access to the easement. Difficulty arises when new providers attempt to enter a community and are unable to negotiate agreements with MDU owners because exclusive agreements have already been entered into with incumbent providers.

It was further explained that under federal law, strict requirements are placed on everyone who holds a franchise and requires that a cable franchise holder serve all residents regardless of income. Some cable companies are concerned that this requirement cannot be met when they are prevented from negotiating MDU access agreements due to existing exclusive agreements with incumbent providers.

The representative of Everest Connections requested legislative action to allow those property owners that want to be released from existing exclusive agreements with incumbent providers to

be released from those agreements thereby facilitating competition. Legislation addressing this issue was introduced during the 2002 Legislative Session in the form of SB 593. However, the representative of Everest Connections suggested changes which more closely reflect the intent of the bill. The suggested language would:

- Prohibit a landlord from interfering with or refusing to allow access or service to a tenant by a duly franchised communication or cable television provider;
- Allow the owner of a MDU that has an exclusive agreement to allow a provider access to an easement to void the exclusivity of the agreement without penalty;
- Provide for an arbitrator to be appointed to determine the appropriate level of compensation due to the owner if the MDU owner and a new provider cannot agree on an appropriate rate of compensation for access to the easement;
- Prohibit the creation of any new or renewed agreements between a provider and an MDU property owner giving an exclusive easement; and
- Sunset any exclusive easement provisions for access to MDU to communications or cable television providers in existing agreements within five years from the date the agreement was executed or April 1, 2005, whichever is sooner.

**Problems Associated with MDU Wiring and Infrastructure for Communication Services.** It was explained to the Committee that the



location of demarcation points, or interface locations where the provider hooks up to the customer's wiring, can provide a competitive disadvantage for new cable communications providers. If the demarcation point is located in a common area, it is easier for competitors to provide services to customers in the MDU. According to the representative of WorldNet, competition is being hindered in Lawrence where the wiring design implemented by the incumbent provider in the mid 1990s has placed many landlords in a difficult position. Apparently, the incumbent provider placed the demarcation points within each individual apartment unit. As a result, competitors would be required to "overbuild" or duplicate facilities involving additional wiring on the outside of the structure and an inconvenience to the landlord and tenant.

The representative of WorldNet asked the Committee to consider requiring a common demarcation point in MDUs, which would facilitate competition. To this end, the company requested a legislatively mandated 12-24 month transition period where all marketing contracts are voided and MDU wiring is moved to a common demarcation point.

At the November meeting, the Revisor of Statutes presented testimony on the constitutional issues surrounding the proposal to limit any MDU exclusive

easement provisions in existing contracts to five years. He noted that three of the six states regulating cable communication in MDUs have experienced constitutional problems.

In question are the issues of the takings clause prohibiting the taking of property without just compensation, and the impairment of contracts clause prohibiting states from passing any law that impairs obligations under contract.

The Revisor noted that KSA 58-2553(a)(5) currently prohibits a landlord from interfering with or refusing to allow access or service to a tenant by a communication of cable television service duly franchised by a municipality.

#### **CONCLUSIONS AND RECOMMENDATIONS**

The Committee acknowledges that the Legislature cannot interfere with current contractual agreements. However, the Committee urges the Legislature to request an Attorney General's opinion as to whether KSA 58-2553 would prohibit the creation of an exclusive easement provision for MDU access to communications or cable television providers. The Committee further urges the appropriate standing committees to respond accordingly based on the Attorney General's opinion.