

MINUTES OF THE SENATE COMMERCE COMMITTEE.

The meeting was called to order by Chairperson Alicia Salisbury at 8:00 a.m. on March 21, 2000 in Room 123-S of the Capitol.

All members were present except:

Committee staff present: Lynne Holt, Legislative Research Department
Jerry Ann Donaldson, Legislative Research Department
Bob Nugent, Revisor of Statutes
Betty Bomar, Secretary

Conferees appearing before the committee:

Others attending: See attached list

HB 2688 - Capital formation company act

Kansas, Inc., distributed amendments to **HB 2688**, (Attachment 1) and a sheet which references the provisions of the bill and their placement in the bill. (Attachment 2)

Senator Barone moved, seconded by Senator Gooch, that substitute for HB 2688 be amended at Page 4, line 42, following the word “a” by inserting the word “single”; line 43 following “\$25,000” by adding the following: “or more than \$2,000,000; nor shall any one person’s combined investment for the purpose of earning tax credits exceed \$5,000,000”. The voice vote was in favor of the motion.

Senator Barone moved, seconded by Senator Umbarger, that substitute for HB 2688 be amended at Page 1 in the title, by striking the words” concerning venture capital;”;

“at Page 2, Line 7, by adding a new subsection as follows: “(c) ‘Authorized capital formation company and Authorized CFC’ means a capital formation company that has been designated by the secretary as having met the requirements of this act necessary to raise capital investments but that has not yet received the designation as a certified formation company.”; re-alphabetizing the remaining subsections “(d), (e), (f), (g), (h), (i), (j), (k), (l), (m) and (n);

“at Page 4, on Line 4 by adding: “This provision shall not however remove the requirements set forth in paragraph (p)(1)(B) of this section which states that at least 50% of the employees of the business shall be resident in Kansas.”; on Line 30 following the “(,)” inserting “or”; on Line 38 striking “com-“; on Line 39 striking “mencing after taxable year 2001” and inserting “ending after June 30, 2003.”;

“at Page 5, on Line 5 striking “submit an application to be designated as a CFC”; on Line 6 after the word “every” inserting the word “certified”; on Line 7 inserting the word “certified” before “CFC’s”; on Line 11, following the word “for” striking “certification” and inserting “authorization as a CFC”; on Line 13, following the word “application” inserting “for authorization as a CFC”; on Line 16, striking the word “of an”; on Line 28, following the word “act” inserting a “(.)” and striking the remainder of Line 28 and all of Line 29; on Line 31 following the word “application” adding “for authorization as” and striking the word “to become”;

“at Page 6, on Line 30 inserting the word “certified” before “CFC”; on Line 31, following the word “Within” adding the following: “a period of time established by the secretary, after receipt of application for authorization as a CFC”; striking “75 days of application” and following the word “the” inserting the word “authorization; on Line 32 striking the following: “certification and notify the secretary of the department of revenue of such certification”; on Line 33 striking “refuse the certification” and inserting “deny authorization”; on Line 34 striking the word “refusal” and inserting the word “denial”;

“at Pages 6 and 7, striking all of Section 4 in its entirety and inserting a new Section 4 which reads as follows: ‘Sec. 4. (a) An authorized capital formation company having been authorized by

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the secretary pursuant to Section 3 shall have a period of not more than 365 days from the date of receiving authorization in which to procure certified capital investment.

“(b) In order to receive certification by the secretary, an authorized capital formation company shall raise a minimum aggregate certified capital investment of no less than \$5,000,000. In the case of an authorized capital formation company formed by an innovation and commercialization corporation or an affiliate innovation and commercialization corporation created under the KTEC innovation and commercialization corporation program, such minimum certified capital investment shall be no less than \$1,000,000.

“(c) Total capital investment deemed certified for the purpose of earning tax credits shall not exceed \$10,000,000 in a single capital formation company. In the case of a capital formation company formed by an innovation and commercialization corporation or an affiliate innovation and commercialization corporation created under the KTEC innovation and commercialization corporation program, such maximum certified capital investment shall not exceed \$1,500,000.

“(d) If during the fund raising period, an authorized capital formation company demonstrates to the secretary that the maximum cumulative certified capital investment has been met pursuant to this act, the secretary shall either designate the capital formation company as a certified capital formation company and notify the secretary of revenue of such certification; or shall deny the certification and notify the capital formation company of the basis for denial.

“(e) All capital investment deemed certified for the purpose of earning tax credits must be certified by the investor to be new monies in that such monies were not being used for seed or venture capital prior to making the investment in a CFC. Any attempt to transfer funds from an existing venture capital fund to a CFC for the purposes of earning a tax credit shall constitute a violation of this act and may lead to decertification.

“(f) No capital investments shall be certified by the secretary until such time when the minimum cumulative certified capital investments are met.

“(g) Upon the end of the fund raising period as established by the secretary, capital formation companies that have reached the minimum cumulative certified capital investment requirement but have failed to reach the maximum cumulative certified capital investment requirements shall be certified by the secretary in rank order based on the amount of certified capital investment raised by the capital formation company and the amount of tax credits available for allocation upon the secretary’s satisfaction that all such investment was made pursuant to this act.

“(h) The secretary will notify the department of revenue upon certification of a capital formation company.

“(i) Designation as an innovation and commercialization corporation or an affiliate innovation and commercialization corporation created under the Kansas technology enterprise corporation shall not relieve such entity from compliance with any provisions of this act except where stated otherwise.”

“at Page 7, on Line 38 striking “15” and inserting “30”;

“at Page 8, on Lines 5 and 8, striking “15” and inserting “30”; on Line 39, striking “10%” and inserting “20%”; on Line 42, following the word “of” inserting “authorization of”;

“at Page 9, striking all of Lines 5, 6, 7 and 8 in their entirety; on Line 21 and Line 22, striking “authorizing” and inserting “authorizing or certifying”; on Line 22 striking “the formation of”; on Line 24 adding the word “or authorized”; on Line 29 following the word “for” inserting the words “authorization and”;

“at Page 10, on Line 5 striking the word “capitol” and inserting the word “capital”.
The voice vote was in favor of the motion.

Senator Barone moved, seconded by Senator Umbarger, that new Section 4 of substitute for HB 2688 be further amended by inserting a new subsection (d) which reads as follows: “(d) A CFC is hereby authorized to be formed for the purpose of investing exclusively in non-metropolitan counties as defined in K.S.A. 74-5093 and amendments thereto. In the case of a CFC formed exclusively for the purposes of investing in non-metropolitan counties of the state, the secretary may enter into an agreement with the CFC at the time of application to establish maximum investment, certification may take place pursuant to paragraph subsection (f) of this section.”; and re-alphabetizing the remaining sections. The voice vote was in favor of the motion.

Senator Gooch moved, seconded by Senator Ranson, that substitute for HB 2688 be amended conceptually to provide that a business funded through a CFC must remain in business in

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Kansas for 10 years. The motion was defeated on a voice vote.

During Committee discussion Senator Steffes questioned the timing of the legislation in **substitute for HB 2688**, and whether it was the correct state policy. It provides for a transfer of \$50 million from the people of Kansas and creates wealth for the wealthy and does not necessarily create jobs. There was a feeling that a strategic plan should be completed prior to enactment of this legislation. There should be consideration of the Secretary's position relating to the spending of \$50 million on a new project when present economic development projects are being cut due to the financial crisis in the state. Senator Ranson also stated her opposition to investment in a new program when the state presently has a program which invests \$36 million with a 25% return to the state.

Senator Barone moved, seconded by Senator Salisbury, that substitute for HB 2688 be recommended favorably for passage as amended. The recorded vote was Yes - 7, No - 4. The motion passed.

Upon motion by Senator Gooch, seconded by Senator Jordan, the Minutes of the March 17 meeting were unanimously approved.

The meeting adjourned at 9:00 a.m.

The next meeting is scheduled for March 22, 2000.