

MINUTES OF THE SENATE COMMERCE COMMITTEE.

The meeting was called to order by Chairperson Alicia Salisbury at 8:00 a.m. on March 16, 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:

Janet Gardner, President, Local 6407, Communication Workers of America
Ralph Lagergren,
Gary Sherrer, Lieutenant Governor/Secretary of Commerce and Housing
P. Mitchell Woolery,

Others attending: See attached list

Substitute for HB 2688 - Capital formation company act

Janet Gardner, President, Local 6407 Communication Workers of American (CWA), testified on **HB 2688**, stating support for legislation which creates jobs in Kansas. Ms. Gardner, in response to a question from the Committee, stated she represented her views, not the CWA's. (Attachment 1)

Ralph Lagergren, Rimfire Management, testified **HB 2688** would be helpful to inventors in providing capital through the final production and merchandising phase in the development of a product. Mr. Lagergren, a private entrepreneur, described ideas of inventors for which he has produced prototypes, obtained financing and now manufacturing: the finger pencil in Paola and the Renegade Tool in Parsons. Conventional financing is not available for some projects as the risks are high and banks have a fiduciary responsibility to their customers; however, in order to take risks and create new products it is necessary for an influx of cash to produce and manufacture the product. The passage of **Substitute for HB 2688** would provide the capital to produce and manufacture these products in Kansas and to create jobs for Kansans.

Lieutenant Governor/Secretary Gary Sherrer stated his opposition to **Substitute HB 2688** is based on the following: 1) cannot support a new \$50 million program while core economic development programs continue to be cut; 2) questions whether the establishment of venture capital funds is the highest economic development priority; 3) questions the timing of creating a new economic development program while engaging in a comprehensive study to ascertain the programs and strategies needed for the future; and 4) questions certain public policy elements set out in the legislation. (Attachment 2)

In response to questioning, the Lieutenant Governor/Secretary Sherrer clarified that his opposition is as the Secretary of the Department of Commerce and Housing and he was not speaking for the Governor, that he had stated his concerns about the legislation at numerous meetings, both private and public.

Committee members questioned the advisability of legislation that contains no requirement to stay in Kansas after the initial capital investment of Kansas money.

P. Mitchell Woolery, Securities Lawyer, stated the Securities Exchange Commission (SEC) laws regulate the process by which investors become part of a venture capital fund, and to a lesser extent, how they exit the fund; generally, the SEC does not regulate the fund itself or its operations. Once a fund is

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established, it is unlikely the SEC or any state securities commissioners will have ongoing contract with the fund, although either may investigate complaints of fraud.

CFC's are a type of venture capital fund specifically established by state statute. Venture capital funds and persons association with them are regulated by the Securities Act of 1933, the Securities Exchange Act of 1934, the Investment Company Act, and other federal securities laws and regulations, as well as by the securities commissioner of each state in which potential investors are located. **Substitute for HB 2688** further provides some regulatory oversight by the Department of Commerce and Housing. The general oversight of the SEC includes exempt offerings, disclosure to potential investors, and compliance with the Investment Compliance Act for which venture capital funds generally limit their investors to not more than 99 direct or indirect investors. (Attachment 3)

Mr. Woolery stated there are only five specific types of exemptions from securities laws registration requirements likely to be used in setting up a venture capital fund like a CFC. Exemptions: 1) Allow the CFC to seek up to \$1 million from "retail" investors. The term "retail investor" is not a legal term but generally used to describe investors who are not "accredited". 2) Allow the CFC to seek up to \$5 million from an unlimited amount of accredited investors or up to 35 "retail" investors; 3) Allow the CFC to seek an unlimited amount of money from an unlimited amount of accredited investors or up to 35 "sophisticated" investors; 4) Allow an unlimited amount of money to be raised from sophisticated investors; and 5) Allow an unlimited amount of money to be raised by the CFC from accredited, sophisticated or retail investors. The CFC, the investors and the businesses in which investments are made would all need to be based in Kansas.

An "accredited investor" includes (1) a natural person with a \$1 million net worth, (2) a natural person with an individual annual income of \$200,000 (\$300,000 with his or her spouse) for the year and the past two years, or (3) an entity like a corporation with total assets of more than \$5 million. A "sophisticated" investor includes persons who are able to have access to all material information, who are able to fend for themselves and bear the risk of total loss of their investment.

David Frankland, President, Digital Archaeology, submitted written testimony in support of **Substitute for HB 2688**. (Attachment 4)

The meeting adjourned at 9:00 a.m.

The next meeting is scheduled for March 17, 2000.