

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY

Held in Room 522, at the Statehouse at 3:30 ~~a.~~^{p.} m., on February 20, 1978.

All members were present except: Representatives Baker and Hoagland, who were excused.

The next meeting of the Committee will be held at 3:30 ~~xxx~~^{xxx} p. m., on February 21, 1978.

These minutes of the meeting held on _____, 19____ were considered, corrected and approved.



Chairman

The conferees appearing before the Committee were:

Representative Talley
Mr. Greg Bangs, Kansas Home Builders
Mr. Lance Burr, Kansas Association of Realtors

The meeting was called to order by the Chairman, who announced a deviation from the printed agenda because there had not been adequate time to consult with the Secretary of Corrections on the package of corrections proposals.

Rep. Talley appeared on HB 2753, explaining the bill proposed to treat people as individuals rather than groups. Also, it would protect the absentee resident or owner. (See printed statement.)

Mr. Greg Bangs, Kansas Home Builders, testified that this proposal would clear up a line of possible abuse, because presently the statute does not require a letter to be sent to the property owner in areas to be re-zoned. He supported Rep. Talley's proposal.

Mr. Lance Burr, representing the Kansas Association of Relators, told the committee that his Association is interested in such legislation, and noted if an individual owns property in one place and lives somewhere else, he would not receive notice. He suggested there is a constitutional question about materially affecting someone's property rights without giving adequate notice.

The Chairman inquired if it wouldn't be a problem to cities which were adopting a new zoning plan, insofar as the number of notifications might be concerned. Mr. Burr agreed it might be a problem if the city decided to rezone the entire territory. Rep. Heinemann inquired if there were instances of problems, and Mr. Burr replied Wichita has had problems, but in Lawrence, he knows of only one case.

Rep. Martin reported on activities of his subcommittee, concerning HB 2694, explaining they have reviewed the bill and felt the entire committee should have an opportunity to hear interested individuals. He noted Mr. Arden Ensley of the

Unless specifically noted, the individual remarks recorded herein have not been transcribed verbatim. Individual remarks as reported herein have not been submitted to the individuals appearing before the committee for editing or corrections.

Revisor's office had drafted the proposal, and Rep. Roseneau had an interest and should be heard as well. Rep. Martin explained one of the concerns of the subcommittee and others they had talked with, was about the makeup of the committee.

The Chairman stated he would set a time for interested individuals to be heard.

The Chairman called attention to HB 2639, and explained the bill was passed out of committee last year after being introduced quite late; that it was referred back to committee prior to adjournment when it appeared there might be some problems with it.

Rep. Frey stated so long as there is assurance the deputies can protect themselves he could support the bill. He expressed the opinion they do have adequate protection, and believed the various counties take care of this for them. Rep. Mills observed the Chiefs of Police are not liable for their officers, and possibly the same protection should be afforded Sheriffs.

It was moved by Rep. Stites and seconded by Rep. Ferguson that HB 2639 be reported adversely. Motion carried by a majority vote.

The Chairman appointed Representatives Augustine and Frey to look at HB 2712, and report back no later than Wednesday. At this time, he stated Mr. Griggs has a proposed substitute bill which the committee had authorized.

Rep. Ferguson reported on HB 3176, and distributed proposed amendments which had been drafted by Mr. Griggs. The Chairman inquired if the subcommittee had any comments regarding the proposed penalties. Mr. Ferguson explained it had been the feeling the penalty should be moved up to a Class B, with the thought that rape and aggravated sodomy are similar. Rep. Ferguson not only discussed the proposed amendments (see exhibit) but explained how the bill proposed to change the present statutes. Rep. Roth stated, as a member of the subcommittee, there were a number of issues they didn't deal with and which seem worthy of consideration. In particular he expressed concern about rape carrying a Class B penalty. He felt it would be contrary to the recommendations of the interim committee, and personally felt there would be a better chance for conviction with a lesser penalty.

The Chairman observed if a woman is going to charge rape against her husband, there ought to be a petition on file and a restraining order issued pursuant to a hearing, with the order personally served, although he expressed the opinion there would always be the potential for abuse.

Rep. Martin told the Committee if the penalty is reduced he would be inclined to offer an amendment on the floor to raise the penalty back to B.

The Chairman asked for comments about the definition of the crime where a marital relationship exists, and Rep. Matlack stated she felt it should be the same, especially where there has been a restraining order issued. Rep. Stites observed he had never had such a case arise, but stated at times like that, both parties are under a great deal of stress, are angry with each other, and might be inclined to harass each other. Rep. Matlack moved conceptually that the bill be amended as discussed. Motion was seconded by Rep. Whitaker.

Rep. Lorentz observed this would be a situation where two parties are involved and they are the only ones who have knowledge of what is going on. He suggested this would invite a lot of problems. Rep. Roth noted some states have taken the approach of "degrees of sexual molestation", and that perhaps an interim committee should look at this matter. Upon vote, motion lost.

It was moved by Rep. Ferguson and seconded by Rep. Frey that age 18 be changed to 16 in line 105. Motion carried. Rep. Ferguson suggested that the penalty in line 76 should be changed to a C felony to keep in consistent with line 106. Rep. Lorentz moved conceptually to change the penalties, treating the two forceful crimes the same. Motion was seconded by Rep. Ferguson. Motion carried.

The Chairman asked members to consider again if rape and aggravated sodomy should carry the same penalty. It was moved by Rep. Roth and seconded by Rep. Mills that lines 42 and 76 be amended to change the penalty to a Class C felony. Representatives Gillmore and Martin protested the change. Upon vote, motion lost.

The Chairman noted there is the matter of clean up language in the title and throughout the bill. It was moved by Rep. Augustine and seconded by Rep. Matlack that this be done. Motion carried.

It was moved by Rep. Whitaker and seconded by Rep. Ferguson that HB 3176, as amended, be recommended favorably. Motion carried by a majority.

The Chairman announced members should expect the meetings to run quite late the next two evenings.

The meeting was adjourned.

STATE OF KANSAS

J. E. ERNIE TALLEY
REPRESENTATIVE 94TH DISTRICT
FAR WEST WICHITA
535 WESTSHORE DRIVE
WICHITA, KANSAS 67209



TOPEKA

HOUSE OF
REPRESENTATIVES

COMMITTEE ASSIGNMENTS
MEMBER: ASSESSMENT AND TAXATION
LABOR AND INDUSTRY

2-20

HB 2753

This bill would require the zoning authorities to treat people as individuals, instead of as groups, therefore, protecting their individual rights.

This legislation would be most beneficial to the "little guy" the individual who is not versed on the contents of legal publications, who does not have his finger on the pulse beat of city politics, and who would otherwise not be informed of the subtleties of the ordinance or the practical effects it might have on the use of their property.

As the law stands now, absentee ownership and others who do not happen to take the newspaper in which the publication notice is published, receive, in effect, no notice of the zoning changes.

Legislature, under its present law, has deemed it necessary and appropriate to notify all landowners located within 200 feet of any area proposed "...to be altered and an opportunity granted to interested parties to be heard," when a zoning ordinance is amended as to a "Specific property." I think it is just as important to forward like notices when there is a "general revision" of an ordinance. Certainly the property can be just as adversely affected, if not more so.

In general, the effect of my bill would require the cities of Kansas, which are attempting to change a zoning ordinance, to notify the owner of the property, whose zoning would be changed, of public hearings to be held before the Planning Commission. It would also require the notification of property owners within 200 feet of the specific property to be affected of such proposed change and given a chance to appear before the Planning Commission.

It would also bring into effect the requirement of a three-fourths majority vote of the council on each specific change if a protest were filed of owners of 20 percent of the total area within 200 feet of the tract sought to be rezoned.

2-20

K.S.A. 60-1101 is hereby amended to read as follows:

60-1101(a) Except as provided in paragraph (b) hereunder any person furnishing labor, equipment, material, or supplies used or consumed for the improvement of real property, under a contract with the owner or with the trustee, agent or spouse of the owner, shall have a lien upon the property for the labor, equipment, material or supplies furnished, and for the cost of transporting the same, and the lien shall be preferred to all other liens or encumbrances which are subsequent to the commencement of the furnishing of such labor, equipment, material or supplies at the site of the property subject to the lien. When two or more such contracts are entered into applicable to the same improvement, the liens of all claimsts shall be similarly preferred to the date of the earliest lien of any of them. [L. 1963, ch. 303, 60-1101; L. 1965, ch. 335, §5; L. 1972, ch. 223, §1; July 1.]

(b) any person furnishing labor, equipment, material, or supplies used or consumed for the improvement of real property, used or to be used as a single family residence, under a contract with the owner or with the trustee, agent or spouse of the owner, shall have a lien as provided in (a) only if such person shall first provide to the owner or the trustee, agent or spouse of the owner a written notice which shall include the following disclosure language in ten point bold type.

FAILURE OF THIS CONTRACTOR TO PAY THOSE PERSONS SUPPLYING MATERIAL OR SERVICES TO COMPLETE THIS CONTRACT CAN RESULT IN THE FILING OF A MECHANIC'S LIEN ON THE PROPERTY WHICH IS THE SUBJECT OF

OF THIS CONTRACT PURSUANT TO K.S.A. 60-1103. UPON REQUEST, THIS CONTRACTOR SHALL PROVIDE YOU WITH "LIEN WAIVERS" FROM ALL PERSONS SUPPLYING MATERIAL OR SERVICES FOR THE WORK DESCRIBED IN THIS CONTRACT. FAILURE TO SECURE LIEN WAIVERS MAY RESULT IN YOUR PAYING FOR LABOR AND MATERIALS TWICE.

This notice shall be provided prior to receiving payment in any form or kind from said person (a) either at the time of the execution of the contract, (b) when the materials are delivered, (c) when the work is commenced, or, (d) delivered with first invoice.

(c) Any person who fails to provide the written notice set out in section (b) hereof shall be liable to the owner for all damages sustained by said owner as a result of perfected mechanic's lien or liens including attorney fees incurred by said owner, and further such failure to provide notice which results in said damages to the owner shall be prima facie evidence of fraud by any such person failing to provide said notice.

(d) Any person or lending institution which shall lend funds for the construction, alteration, repair or remodeling of any real property used or to be used as a single family residence, and who shall further take a mortgage of any nature on such property and who shall further manage the disbursement of said loan proceeds either with or without the approval of the owner of said real estate for the payment of services and materials used in the improvement of said real estate, shall obtain lien waivers from all persons supplying materials or services for such construction, alteration, repair or remodeling of such real property, prior to making final payment from such loan proceeds. Any mechanic's liens perfected as a result of

the failure of such person or lending institution to obtain lien
waivers as herein provided shall render such person or lending
institution liable to the owner of said real estate in the amount
or amounts necessary to satisfy said mechanic's lien or liens.

2-20

PAH3176-1

PROPOSED AMENDMENTS TO HOUSE BILL NO. 3176

Be amended:

On page 1, in line 28, by inserting after "wife" the following: ", or with his wife when an action filed pursuant to K.S.A. 1977 Supp. 60-1604 is pending";

On page 3, in line 110, by striking "and" where it first appears and inserting in lieu thereof a comma; also in line 110, by inserting "and 21-3603" after "21-3602,";

In the title, in line 16, by striking "and" where it first appears and inserting in lieu thereof a comma; also in line 16, by inserting "and 21-3603" after "21-3602,";