MINUTES OF THE House COMMITTEE ON Judiciary

Held in Room 522, at the Statehouse at 3:30 ~~a.m.~~/p. m., on February 21, 1978.

All members were present except: Representatives Gastl, Hayes, Hoagland, Hurley and Mills, who were excused.

The next meeting of the Committee will be held at 3:30 ~~a.m.~~/p. m., on February 22, 1978

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

Chairman

The conferees appearing before the Committee were:

Representative Roseneau
Mr. Arden Ensley
Representative Reardon
Mr. Jeff Wampler
Mr. Payne Ratner, Jr.
Pat Ireland, SRS
Mr. Wes Bittle
Mr. John Blythe
Mr. Fred Trotman
Mr. Bill Webb
Dr. William Truitt
Mr. Charles Hamm, SRS
Pat Ireland

The meeting was called to order by the Chairman, who announced the Corrections Package had originally been scheduled, but the sub-committee is not quite ready, and not all of the drafting has been done.

Rep. Roseneau appeared on HB 2694, and suggested that members look at the make-up of the committee which the bill proposes. He pointed out fifty percent of the members will be attorneys, and suggested it would not be proper for a freshman to be serving on such a committee. He noted about forty percent of the claims are prisoner claims, and the warden should be allowed to take care of those matters up to $150.00. He further stated he could see no reason why the other sixty percent couldn't go to Ways and Means.

The Chairman observed he did not know what the thinking was insofar as having an attorney chair the committee. Rep. Martin explained he had talked with Jim Wilson in the Revisor's Office and apparently this was codified several years ago, and then was deleted during the decisions with regard to governmental immunity.

Rep. Roseneau called attention to the fact line 114 is the most drastic change, but that he does not believe lines 21 through 25 are needed. The Chairman inquired how Rep. Roseneau would feel about the Vice-Chairman of the Ways and Means Committee serving as Chairman, with the thought in mind, that person wouldn't be as busy as the Chairman. He stated he would have no objection to that.

Mr. Arden Ensley told the committee in the past such matters were handled by joint rules of the House, and had historically been handled by a single bill. He explained it was the thinking of the committee this would be a better procedure since any changes must be re-adopted every time there is a new House as the rules apply only for the period for which the House is elected. He explained the Chairmen of the Ways and Means and Judiciary Committees have been designated because it was rather certain they would be experienced legislators. As all payment bills go before Ways and Means, it was the feeling this would allow continuity. The proposed procedures are not unlike the ones presently used, but this simply formalizes them. Rep. Frey asked if the committee was thinking of adopting rules and regulations as the agencies do, and Mr. Ensley explained that was not the intention, but perhaps it should be clarified.

Rep. Reardon appeared in support of his HB 3037, explaining he was anxious to exempt persons from liability when they offered in good faith, treatment to an injured individual. He pointed out the bill still retains reference to negligence, but simply extends protection to lay persons who do the best they can under difficult situations.

Dr. William Truitt, President, Kansas Chapter, American College of Emergency Physicians, testified in support of the bill, and offered some suggestions for modification. He stated that in cases of heart attacks, even though a person might not be trained in cardiac massage or resusciation, it is wise to go ahead and do what you can because by the time you secure help it would be too late. He told the committee at all the courses they run to train people, someone always asks about liability, and he urged these people should have protection for performing a humanitarian act.

Mr. Jeff Wampler appeared in support of HB 3037, and offered a printed statement setting forth the position of the Kansas Farm Bureau in regard to the Good Samaritan Act.

Mr. Payne Ratner, Jr., asked the committee to consider an amendment which would offer protection to physicians or individuals transferring a patient from one setting to a larger medical center. He explained when such a transfer is made, many times the physician from the original setting does not have staff privileges in the admitting hospital, and this causes problems in emergency situations. Rep. Frey suggested this would lower the negligence standard down to gross negligence. Mr. Ratner agreed in that particular situation it would be true, but would have no effect on what was done at the scene of an accident or disaster. Rep. Whitaker observed these doctors are being paid for what they are doing, and this bill would not protect them. Mr. Ratner suggested the bill perhaps should read "with or without compensation".

Mr. Charles Hamm appeared on HB 2860, as a representative for SRS, and he introduced Ms. Pat Ireland who is a Social Worker. She offered a printed statement with suggested amendments. (See exhibit.)

The Chairman appointed Representatives Martin, Stites and Augustine to serve as a sub-committee to consider the proposed amendments to HB 2860.

Rep. Stites reported for the sub-committee which had been working with HB 2988. He noted they had made some proposed amendments which had been cleared with Representative Marvin Littlejohn and with John Blythe. (See proposed amendments.)

It was moved by Rep. Stites and seconded by Rep. Augustine, that the proposed substitute bill for HB 2988, be recommended favorably to the committee of the whole. Rep. Roth offered a substitute motion to strike in the last line of new Section 3 "and may then take possession of said ground", and recommend the bill to the committee of the whole. Motion was seconded by Rep. Ferguson. Rep. Stites observed that this was probably correct, and Mr. John Blythe expressed no objection. Upon vote, motion carried.

Rep. Augustine told the committee he had introduced House Bill 3088 at the request of a constituent. He introduced Mr. Wes Bittle, who testified there are instances of abuse of the power of eminent domain in his area, and presented a written statement to substantiate his testimony. (See exhibit.)

Mr. Blythe stated he had not come to appear on this particular bill but that his organization had expressed some concern about eminent domain procedures as it relates to agriculture.

Mr. Fred Trotman, appeared in favor of the bill, and expressed the opinion such amendments as appear in the bill would be appropriate and timely. (See printed statement.)

Mr. Bill Webb, representing the Electric Associations of Kansas, testified he feels such legislation is not necessary and would cause potential delays in serving the citizens of Kansas. He suggested that the present procedure is workable and he felt there are adequate safeguards built into the present statutes.

The Chairman called attention to the hand-outs on HB 2212, and noted the subcommittee felt there are now adequate remedies available and the bills is not necessary. It was moved by Rep. Augustine and seconded by Rep. Lorentz that the bill be reported adversely. Motion carried.

Rep. Lorentz distributed balloon amendments to HB 2787, and explained the subcommittee felt the only valid part of the proposal was that which allowed a person to be appointed to receive notice of meetings. He moved that HB 2787 be amended as shown in the balloon. Motion was seconded by Rep. Matlack, and upon vote, carried. It was then moved by Rep. Lorentz and seconded by Rep. Matlack that the bill, as amended, be recommended for passage. Motion carried.

The Chairman called attention to HB 2694, and explained in light of testimony and discussion he had marked a copy of the bill with some suggested amendments which Mr. Griggs had looked over. He expressed the opinion it would be appropriate to retain a requirement that there be two attorneys from each body, and clean up the language in lines 32 through 44, and to provide for alternating the Chairmanship of the committee. It was moved by Rep. Lorentz and seconded by Rep. Augustine that a conceptual motion along these lines be adopted, and the bill be recommended to the committee of the whole. Motion carried.

The Chairman appointed a subcommittee to deal with HB 3037, comprised of Representatives Roth, Gillmore and Frey.

The meeting was adjourned.

JUDICIARY COMMITTEE
FEB. 21, 1978

NAME	ADDRESS	ORGANIZATION
Wm D Webb	Kansas City Mo.	KC Power & Light Co - HB3088
Terry L. Oliver	Columbus, Ks	Empire District Electric Co.
Charles D. Lewis	Junction City, Ks	United Telephone of Kansas
Janet Stubbs	Topeka, Ks.	" " " "
Jeff Wempler	Manhattan	Farm Bureau
Wesley Bittel	Ellis	KACD
Marilyn Bradt	Lawrence	League of Women Voters, KS
Joan W. Kelly	Topeka	Jr. League Topeka
Frank Hitman	Ulysses	SW Ks Irrigation Assn.
Susan Seeger	Topeka	St. Planning & Research
Pat Ireland	Lawrence, Ks	SRS
Delbert Ebert	Manhattan, KS	Farm Bureau Manhattan

2-21

Statement to the
House Judiciary Committee

Regarding House Bill 3037
Presented by

Jeff Wampler, Research Assistant
Public Affairs Division--Kansas Farm Bureau
February 21, 1978

Mr. Chairman and members of the committee: My name is Jeff Wampler. I am the research assistant for the Public Affairs Division of Kansas Farm Bureau. We thank you for the opportunity to be heard regarding H.B. 3037.

Farm Bureau's position regarding good samaritan laws is as follows:

Good Samaritan Law

More and more state legislatures have come to realize that original intent of such laws has been clouded as additional health professionals sought exemption from such statutes. We would encourage the Kansas Legislature to remove the specific language exempting various health professionals and laymen now found in Kansas Statutes and substitute a general statement exempting from civil damages any person acting in good faith to render emergency aid without compensation.

As can be seen from this resolution, we support legislation such as H.B. 3037 which allows any person acting in good faith to render emergency care at the scene of an accident or sporting event.

At the present time not all training programs in cardiopulmonary resuscitation (CPR) are covered by law. A course offered by St. Francis Hospital is a good example. Their course is not taught by the Heart Association or the Red Cross. Therefore, graduates of the St. Francis class are liable for civil damages. They would be forced to pass by the scene of an accident.

Because qualified personnel as those stated above would be liable for damages, we support H.B. 3037 which would exempt any person acting in good faith to render emergency treatment.

Mr. Chairman and members of the committee, thank you for the opportunity to appear before this committee.

2-29

STATEMENT
FROM PAT IRELAND OF SOCIAL AND
REHABILITATION SERVICES IN REGARD
TO HOUSE BILL 2860

DATE: February 21, 1978

Need For A New Termination of
Parental Rights Statue

When a child is placed outside of his parent's home through a Dependency and Neglect disposition, the responsibility of Social and Rehabilitation Services is to attempt to reunite that child with his Family as soon as the problems leading to the child's placement are under control. It is Social and Rehabilitation Services policy and practice to help the parents, directly and through use of other community services, to cope with their problems and be able to care for their children themselves. Much time and energy is put into trying to reunite the parent and child because this is, of course, the optimum situation for the child and parents.

However, despite intensive services, there are a few parents who simply can not or do not perpare themselves to provide even minimum adequate care of their children. In these incidents, other plans should be made for the child that do provide him a permanent home with parent figures committed to his care until he is grown, and with a future he can count on. For children to have a permanent home who can't be returned to their parents, adoption is the alternative. Termination of parental rights must take place prior to adoption. Without termination of parental rights, the child will remain in foster care.

Foster care arrangements are more easily disrupted than the child's own home, be it adoptive or biological. A crisis in the foster family or the foster family's move to another area, or a child's behavior problems, or disruption by the biological parents may cause a move for the foster child. Or the child's own parents, after years of absence, may return and want to resume care of their child. The foster child, especially if he remains in foster care for several years, may have to move many times to new families, new schools, and new neighborhoods. Such a child is a victim of foster care drift, and the transiency in his life can have damaging, lasting effects on his future emotional health. He may become defensive, fearful, suspicious, and, after repeated moves, he may protect himself from further disappointment and rejection by being less willing to invest in parent-child relationships.

It is widely recognized that the inherent uncertainty about the foster child's status in a family limits the foster child's ability to form close, long-lasting attachments, and denies him the environment necessary for personal development.

This same uncertainty limits the foster parents ability to be committed to the child. In addition, major decisions that parents normally make for a child are not within the foster parents authority to make. Thus asking for lifelong commitment by foster parents when we can not guarantee the child will remain in foster care and full parental authority can not be given to the foster parents is asking too much.

The difference in the degree of permanency that foster care and adoption provide are demonstrated vividly by the following statistics:

> As of January 1, 1977;3,158 of the 6,197 children in SRS custody at that time had experienced 3 or more placements. 5,400 had experienced more than one placement. These would include placements with parents or relatives also. Compare this to only 4 adoptive failures of the 290 children in adoptive placements during the 1977 fiscal year. Two of these failures involved children 14 or over.

Termination of parental rights is not a punitive action against the parents. Rather it is an action that allows the child to move into a permanent home when his parents are found to be unable or unwilling to care for him.

Because the present termination of parental rights bill is extremely vague many children who can not be returned to their parents remain in limbo and suffer the ill effects of impermanency. The present law states in effect that when parents are adjudged to be unfit to have custody of their child, their parental rights may be terminated. No grounds fo unfittness are stated. Termination of parental rights is a very serious matter. Yet because of the vagueness of the present law, standards for termination vary widely from court to court. However, the effect on the children who remain in foster care from early childhool until their adulthood does not vary by court jurisdiction. Nor does the effect on the parents whose rights are terminated change with different counties.

Court time is wasted because of the vagueness of the current law. District attorneys have to second guess at what cases would meet the particular judge's criteria of unfittness. In some jurisdictions even if it is very clear a parent will never be able to care for their child, parental rights are not terminated. On the other hand, in one county a severance of parental rights petition are routinely filed along with the Dependency and Neglect petition.

A clearer and better defined termination statute would relieve some of the range in individual court interpretation and thus provide more equal protection for children across the state. It would allow children to be freed for movement into permanent adoptive homes when their parents evidence that they will not in the forseeable future be able or willing to care for them.

A clearer law would have the further and most beneficial effect of motivating many parents to prepare themselves for their child's return home. At least two counties in Kansas and the Oregan Demonstration Project on permanency planning for children have found that many parent who were comfortable having their children in foster care for one or more years were able to prepare themselves for their childrens' return when facing the real threat of termination of their rights. However, posing termination of rights as a real possibility to parents if they do not prepare for their childrens' return does not act as a motivator in a jurisdiction where the court is reluctant to terminate rights no matter what the circumstances. The parent's attorney will be aware of this and the unmotivated parent will become comfortable having some of the benefits of parenthood without the responsibilities.

SUGGESTED AMENDMENTS to H.B. 2860

I.

A. Amendment: Insert circumstances before "conduct or conditions" in New Section 1, in lines 0030, 0037, 0039, 0040, and 0048.

B. Reason for Amendment:

There are situations where it is not the parents active behavior or "conduct" or a serious diagnosable "condition" but the parents failure to act or passivity that leads to the serious detriment of the child. For example, a parent who lives with an abusive spouse or friend and does not leave him or her for the child's sake.

II.

A. Amendment: Insert mental disorder, after mental illness in line 0042.

B. Reason for Amendment:

Mental illness is defined in K.S.A. 59-2902 as a condition in which the person is a danger to himself or others. Therefore the interpretation of mental illness by the courts would be much stricter than would serve a useful purpose in a termination statute. Our colloguial or everday use of "mental illness" is called "mental disorder" by the American Psychiatric Association. "Mental Disorder" covers those conditions spelled out in the American Psychiatric Associations Diagnostic and Statistical Manual (DSM). The DSM is the standard diagnostic classification system used by mental health professionals.

It is important that the definition in the new law include conditions which don't include only psychotics who are a danger to themselves or others. This is because there are parents with diagnosable "mental disorders" who do not require hospitalization but who, even with intensive services, still can not provide minimally adequate care of their children.

III.

A. Amendment: Insert emotional in line 0047, Section 1, (b) (3). "Physical or emotional neglect of the child."

B. Reason for Amendment:

Emotional neglect may have as serious consequences as physical abuse. A child who receives little or no parental affection, positive reinforcement or communication may become seriously emotionally disturbed. Babies called "failure to thrive" babies have become physically ill from lack of parental attention.

IV.

A. Amendment : Insert (5) as follows in New Section 1, (b).

(5): If there is information and belief that a condition exists which is seriously detrimental to adequate care being provided for a child, the court may order an evaluation by a physician, psychiatrist, or psychologist, and the court may use the findings of that evaluation in determining if a condition does exist.

B. Reason for Amendment:

There are situations where there is good reason to believe from the parents behavior that they suffer from a mental disorder which is of a serious nature. However, sometimes these parents will not submit to evaluation and therefore the condition remains undiagnosed and thus not useable in court.

We need to have both "mental disorder" and "mental illness" and not just substitute "mental disorder" for "mental illness" so that the courts know that the legislation considers both and is not using the terms synonymously.

V.

A. Amendment: Insert (4), as follows, in New Section 1 (C)

* (4): Failure to carry out a reasonable plan made with Social and Rehabilitation Services or the District Court directed towards integration of the child into the parental home.

B. Reason for Amendment:

There are situations where the parent does maintain contact with the child, and the agency but simply does not prepare himself or herself for the return of the child by taking action to correct the problems which lead to the child's removal from the home or new problems which prevent the child's return. Some of these parents have no diagnosable condition of a serious nature that in itself prevents adequate parenting; they may have even voluntarily placed their child in foster care because of personal problems. The point is that some parents, while keeping contact with the child and the agency, do nothing to correct a situation which prevents the child's return home although servies are offered to help them.

Some parents become very comfortable having someone else provide care for the child and enjoy the contact with the child without any of the responsibilities. The Oregon Project on permanency for children found that when the threat of severance became real to these parents, many of them did become motivated to work for their childrens' return home.

Note that this proposed amendment says:

1) "a reasonable plan." Therefore it would be up to the court to determine if the plan were reasonable. A parent's inability to carry out unreasonable demands or plans would not be considered grounds for termination or parental rights.

2) "plan ..... directed towards the child's integration into the parental home." Therefore it would not be expected that in every case the parent could correct the situation to such an extent that the child could be returned within one year. However, the parent would have had to have carried out the plan for the year under consideration which worked toward the child's return.

VI.

A. Amendment: Add New Section 5, Section 5 becomes section 6. Section 6 becomes section 7.

New Section 5: Any appeals from any order of the District Court terminating parental rights shall be acted on without unnecessary delay and shall be given precedence in the court to which the appeal is taken.

B. Reason for Amendment:

Children who could be placed in adoptive home are forced to wait in foster care during the lengthy appeal periods. The result of this delay can be that the child develops stronger ties to the foster home and thus has a more difficult adjustment to make upon moving into an adoptive home. Secondly, foster care is a temporary substitute home and often times children have to be moved from one foster home to another because the foster parents no longer want to care for the child, move out of the state, etc. If the child moved from one foster home to another foster home during the appeal period, the child becomes more reluctant to make emotional commitments to adults. Thus the adoptive placement and adjustment is more difficult to achieve. It must be remembered that a child's concept of time is much slower than an adult's. Thus time which adults could tolerate being in an unresolved situation are more damaging to children.

VII.

A. Amendment: Strike "statute book" and substitute official state paper in section 6, line 00167.

B. Reason for amendment:

There are cases which will be coming to trial before publication in the statute book. It would be tragic for the children involved in these cases to suffer from the vagueness of the present law when a greatly improved new law has already been enacted by the legislature and signed by the governor.

Advantages of H.B. 2860

H.B. 2860, with suggested amendments, provides a fair and reasonable basis upon which findings regarding termination of rights can be made. This bill, if enacted, would help keep children from facing childhoods of uncertainty and transiency, and protect parents from any capricious action that might unfairly deprive them of their rights.

This bill is constructed to cover the situations encountered by the courts and also provides the court the opportunity to use discretion in those infrequent circumstances not specifically delineated.

New section I, (b), states that parental rights may be terminated if the parents' conduct or condition is seriously detrimental to the child and integration of the child into the parent's home is unlikely in the forseeable future due to this. Parental conduct or condition must have a relationship to the inability of the parent to care for the child and must be of serious detriment to the child. Furthermore, it is not just conduct or condition at one point in time, but rather conduct or condition not likely to change.

New section I (b), (1) further expands on this point by citing mental illness or mental deficiency as such conditions if they are of such duration as to render the parent unable to care for the child for extended periods of time. Again, it is not at one point in time, but for extended periods of time. Therefore, a safeguard is provided for parents from capricious actions terminating their rights. At the same time, the child is given an opportunity for a permanent ~~home~~ home whose parents are unlikely to ever be able to care for him.

New section I, (c) addresses the problem of the child placed outside of the parent's home with a parent who does not take steps to prepare himself for the child's return or take reasonable responsibility for the child for a year prior to termination action.

These parents have in effect deserted their children to foster care, but may have no diagnosable mental disorder or deficiency. Some of the parents this section addresses may have even voluntarily gone to SRS and the court requesting foster care because of the pressures of personal problems. New section I, (c), (2), "failure to maintain regular visitation" is important along with the court's authority to disregard incidental visitation in I, (c), (3). This is because some courts will see sporadic visitation by the parents as reason not to terminate rights no matter what the other circumstances or how long the child has been placed outside of the home.

New section I, (c), (3), failure to contact or communicate with the child or the guardian of the child is also important. Services cannot be offered to work for the child's return home if the parent makes himself unavailable to the agency responsible for his child. SRS does see it as our responsibility to reach out to these parents. However, some parents are not available, despite our efforts.

We propose an amendment in this section. New section I, (c), (4), "failure to carry out a reasonable plan made with Social and Rehabilitation Services or the District Court directed towards integration of the child into the parental home". There are situations where the parent does maintain contact with the child, and the agency but simply does not prepare himself or herself for the return of the child by taking action to correct the problems which lead to the child's removal from the home or new problems which prevent the child's return. Some of these parents have no diagnosable condition of a serious nature that in itself prevents adequate parenting; they may have even voluntarily placed their child in foster care because of personal problems. The point is that some parents, while keeping contact with the child and the agency, do nothing to correct a situation which prevents the child's return home, although services are offered to help them. The effect on the child is still that of being left in limbo subject to moves from one home to another and torn between his loyalties to his parents and foster parents.

New section I, (d), addresses the issue of abandonment in a straightforward manner. The time period for children abandoned as opposed to those that new section I, (c) relates to is six (6) months rather than one (1) year. This is because the abandoning parents have not given indication of future intent to care for the child, and their identity or whereabouts are still unknown after six (6) months despite diligent search.

It must be remembered that when dealing with the issue of termination of parental rights, we are not operating in an ideal situation. The best interest of the child would ideally be served if the child could have been cared for by his parents. We are actually looking for the least detrimental alternative for the child. Because of the difficulty of facing these less than ideal situations children are in, and in facing the weighty decision of termination of rights, the issue is often avoided. Kansas can face and deal responsibly with this issue by enacting this clear, defined, and workable termination statute which gives protection to children as well as to parents.

My name is Wesley Bittel. I'm from Ellis, Kansas. I'm in the farming and ranching business and a landowner in Ellis County Kansas. I am Chairman of the Ellis County Conservation District, County Director of the Farm Management Association, past Chairman and Member of the State Conservation Commission of Kansas. I am appearing here today in behalf of the Kansas Association of Conservation Districts which comprises of an Organization of the 105 Conservation Districts of Kansas and governed by a board of five elected supervisors in each county.

I serve on the Water Resources Committee of our State Association. Problems with the Eminent Domain Law was brought to our attention. After reviewing evidence brought before us and after studying the Law and its shortcomings, primarily in the area of high voltage lines being built across the country without regard to what damage it is doing to Kansas's most valuable resources, Agriculture and Water Resources.

Times are bad enough for the landonwers trying to continue producing on todays economics without having some utility company take advantage of them, using the excuse it's in the public interest, or we can't set a precedence, or the need to bring electricity to the public as cheaply as we can, thus abusing the powers given to them under the Law of Eminent Domain by saying its in the public interest. Lets take a real look at some situations where hap-hazard planning has been done and power lines built diagonally across prime farm land forever restricting the production capabilities of the land, and a tremendous finacially loss to the landowner, local government from losses and general

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STATEMENT BY: Wesley Bittel representing KACD in support of House Bill Number 3088

economy of the country.

In most situations we could have our interconnecting high voltage lines and keep our most valuable resources, agriculture productivity, if they were built where they would do the least amount of damage, preferable on section lines or the half mile boarder lines.

I'm going to use a true Eminent Domain situation which was presented before our Committee to illustrate some of the problems.

A landowner knowing he had a quarter section lying within mapped water bearing sand formation, had test wells drilled and the conclusion was enough water was available to support a center pivot irrigation system. This quarter was unsuitable for any other type of irrigation.

Although the quarter was undeveloped before a Utility Company decided to build this high voltage line diagonally across this quarter, preliminary planning had been done and water rights applied for before Eminent Domain proceedings were filed. The landowner offered easements rights around the irrigation project which would have meant construction of about 1500 feet of additional line. The alternative route was rejected by the Utility Company because they said it may set a precendence. Never the less easement rights were taken by their power of Eminent Domain and the line was built diagonally across this quarter during this past year forever keeping this quarter into a dryland farming situation. In checking with the County Appraiser in the County where this quarter is, the difference in valuation of irrigated and dryland is about $500.00 per acre. The tax mill levee in this area ia a little over 70 mills. From a tax loss standpoint using 15% rather than 30% valuation, because the county hasen't been re-evaluated recently, times 70 mill levee = $5.25 per acre or $840.00 real estate tax loss for the local school District and County government. Take this $840.00 x the number of years, assuming 50 years, equals $42,000 tax loss to the local community on a level standard of taxation. NOW, lets look

at the Agriculture loss. First the $500 per acre loss to landowner this amounts to $80,000 if it was for sale. The production loss difference between dryland and irrigated, based on alfalfa production, because it was planted to alfalfa, this last year in anticipation of irrigation, the difference should be a minus of 6 tons per acre or more. At six tons x $50 per ton = $300 per acre x 150 acres = $30,000 gross return loss per year on todays economics. Now take $30,000 x the number of years, again assuming 50 years, this amounts to $1,500,000 gross income loss to the landowner. NOW, lets put this in the right perspective. I'm sure you are aware of the economic income generating factor of 7 to the local, state and national income. So taking the annual loss of difference between dryland and irrigated or $30,000 x economic income generating factor of 7 = $210,000 per year x 50 years = $10,500,000. This is economic loss to the country on this one quarter over the next 50 years assuming stable costs, no inflation and the irrigation water would last 50 years. All the loss because as the Utility Company put it they don't want to set a precedence and build around or construct an additional 1,500 feet of line. I was unable to get the accurate construction costs from the Utility Company to build around this irrigation project up to this time. I would estimate it to be less than $10,000. Never the less the additional construction costs would have been more than offset by the savings from the easements costs by building on the alternative route.

We believe if an agriculture impact statement with emphases on effect of the taking of all Resource Development and on the potential for irrigation should be a requirement of the petition under the Law. This would inform not only the corporation commission and the public but would also inform the Utility Companys what the economic damages would be and perhaps planning would be in a more professional and business like manner.

In the case of type H high voltage lines built by Utilities, only the portion of land considered taken, is the small portion where the poles actually

stand. The law should spell out who is responsible for maintaining the annual nuisance of weeds and/or noxious weeds from growing around poles which cannot be controlled by normal farming practices. It it is the landowners responsibility, as the Utility Company claims, how can appraisers on a jury adequately speculate what the considerations should be during the next 50 years. If it is the landowners responsibility, we believe he should be compensated on an annual basis. This should be added as a 16th point to consider under compensation.

Under Section 26-509 - when the award is appealed by the Condemner or the Utility Company, the law allows the attorney fees. I visualize where damages are small or tracts taken are small by nature, it opens the door for the Utility Companys to steal by legal law. Many people cannot afford to appeal because of the economics involved. Under the law the court appointed three disinterested householders as appraisers and not necessarily qualified to appraise a situation. In many cases they are dominated by other settlement cases rather than appraising the situation at hand on its own merits. This section needs to be changed to allow the attorney fees if the landowner appeals and the court trial award is greater than 10% of the appraisers award. This would tend to have better qualified appraisers appointed, would tend to keep outside pressure from influencing their decisions and keep more honesty in our system.

The situation I used to illustrate the shortcomings under the Law is not unique. If we were to take the conomic figures from this one 1/2 mile example and apply similar figures to all the miles where lines interfer with center pivot irrigation systems, the figures would be astromonical. Now project what we will do to our resources in the future with the ever increasing demand for interconnecting electric service and increased volume of electricity. The choice is not to have electric service or irrigation but we can have both if we use common sense

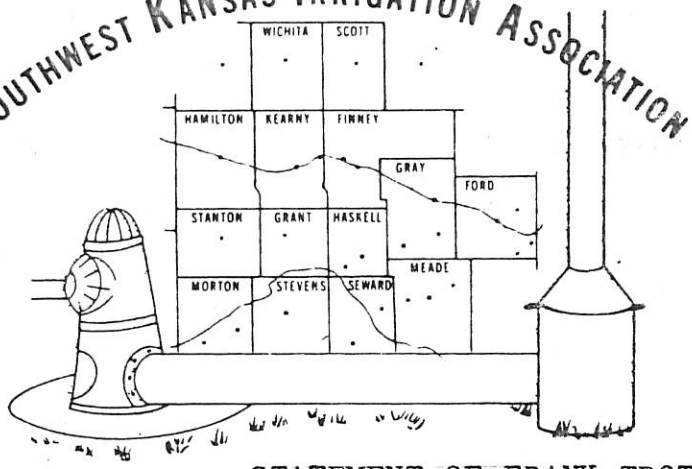
planning, and truly evaluate our resource. Place the lines where they will do the least amount of damage. Our resources are responsible for underwriting the financial cost of all our services.

This country was founded on the principles of human rights and people have the constitutional right to own property. These rights are scared and no entity of government or public service group should be allowed to take private property without due process of our court system. Property owners should be notified in writing and a agriculture impact statement be developed and be available to the public as well as public hearings held before a petition be granted by the corporation commission. Anyone with the power of eminent domain should not be allowed to purchase easement rights until after petition for authority is granted by the corporation commission. As of now, right of way easements can be purchased by the utility company months before approval of the corportion commission.

The sneaky approach that is allowed now under our law must be changed. Title to property should not be allowed to pass until after the 30 day appeal period or until after district court trial.

We need some common sense written into the eminent domain law. We support House Bill 3088 and urge you enact it into law.

SOUTHWEST KANSAS IRRIGATION ASSOCIATION



2-24

Box 254

Ulysses, Kansas

67880

STATEMENT OF FRANK TROTMAN, EXECUTIVE SECRETARY
OF SOUTHWEST KANSAS IRRIGATION ASSOCIATION, INC.

My name is Frank Trotman, executive secretary of the Southwest Kansas Irrigation Association, which represents irrigation farming in the fourteen Southwest Kansas counties of Wichita, Scott, Hamilton, Kearny, Finney, Gray, Ford, Stanton, Grant, Haskell, Morton, Stevens, Seward, and Meade. These counties contain about half of Kansas' three million acres of irrigated cropland. The area also covers the Hugoton gas field and the southern half of Kansas' Ogallala groundwater formation.

The amendments featured in Representative Augustine's bill relating to eminent domain procedure certainly are needed and in the view of irrigation farming in Kansas timely. I say timely because a major part of the continued development of agricultural land for irrigation is upon land which before the advent of sprinkler irrigation systems was not economically feasible to level for flood irrigation. Any taking of land through eminent domain procedure which would be for the purpose of constructing facilities across the land, in many cases, would either reduce or totally eliminate the possibility of developing that land for sprinkler irrigation.

The addition of item 4 in Section 1 of the bill which would require the petition for condemnation to include an agriculture impact statement with emphasis on future resource development and on the potential for irrigation directly acknowledges this impairment of sprinkler irrigation development. If a landowner is to be fairly compensated for the taking of his land, this impact upon his future development of land not taken must be a factor considered by the court.

Under Section 7 (d) titled "Factors to be considered.", the addition of number 16 concerning control of weeds is certainly appropriate. The landowner has a much greater concern for the control of those weeds around structures within the boundaries of the taken land because weeds have a nasty habit of ignoring such boundaries. If the landowner's efforts to control weeds is in anyway impaired by the existence of obstructions beyond his

control by virtue of such land taking, he is justified in receiving compensation for the impairment.

There could be an argument proposed against this bill on the premise that it is intended to be an obstacle placed in the path of entities granted the power of eminent domain. However, that would be an argument structured on emotionalism and not founded on context of the bill. In reality what the bill seeks to accomplish is a truer address of the circumstances involved in an eminent domain procedure and a more equitable method of compensation for the taking of land under such a procedure.

I don't believe either the requirement of an agriculture impact statement or the compensation for weed control pose an economic impossibility on the plaintiff in an eminent domain court action. Quite the contrary, I believe such improvements in the procedure are a necessary, fair and equitable means of assisting the court in arriving at a decision best for the plaintiff, the defendant, and the economic welfare of the state.

I appreciate the opportunity to appear today to express the views of Southwest Kansas Irrigation Association concerning HB 3088.

2-27

Session of 1978

HOUSE BILL No. 2787

By Representative Hineman

1-6

AN ACT concerning meetings of certain public bodies; relating to notice thereof; amending K.S.A. 75-4318 and repealing the existing section.

Be it enacted by the Legislature of the State of Kansas:

Section 1. K.S.A. 75-4318 is hereby amended to read as follows: 75-4318. (a) Except as otherwise provided by state or federal law or by rules of the house or senate, and except with respect to any impeachment inquiry or other impeachment matter referred to any committee of the house of representatives prior to the report of such committee to the full house of representatives, all meetings for the conduct of the affairs of, and the transaction of business by, all legislative and administrative bodies and agencies of the state and political and taxing subdivisions thereof, including boards, commissions, authorities, councils, committees, subcommittees and other subordinate groups thereof, receiving or expending and supported in whole or in part by public funds shall be open to the public and no binding action by such bodies shall be by secret ballot, but any administrative body that is authorized by law to exercise quasi-judicial functions shall not be required to have open meetings when such body is deliberating matters relating to a decision involving such quasi-judicial functions.

(b) Notice of the date, time and place of ~~any regular or special each~~ meeting of ~~any~~ *a* public body designated hereinabove shall be ~~furnished *given as follows*~~:

any regular or special

~~*(1) For a regular meeting of a public body of the state or a political or taxing subdivision thereof, by publication once, seven (7) days prior to the meeting, in the official paper of the state or political or t g subdivision or, if there is no official paper of*~~

~~*the political or taxing subdivision, in some newspaper having general circulation in such subdivision; and*~~

~~*(2) for a special meeting of a public body of the state or a political or taxing subdivision thereof, by furnishing notice*~~ to any person requesting such information~~.~~, *except that:*

~~*(A)*~~ *If notice is requested by petition, the petition shall designate one person to receive notice on behalf of all persons named in the petition, and notice to such person shall constitute notice to all persons named in the petition; and*

~~*(B)*~~ ~~if such~~ notice is furnished to an executive officer of an employees' organization or trade association, such notice shall be deemed to have been furnished to the entire membership of such organization or association.

(c) It shall be the duty of the presiding officer or other person calling the meeting, if the meeting is not called by the presiding officer, to furnish the information required by ~~this~~ subsection *(b)*.

~~(c)~~ *(d)* Prior to any meeting hereinabove mentioned, any agenda relating to the business to be transacted at such meeting shall be made available to any person requesting said agenda.

~~(d)~~ *(e)* The use of cameras, photographic lights and recording devices shall not be prohibited at any meeting mentioned by subsection (a) of this section, but such use shall be subject to reasonable rules designed to insure the orderly conduct of the proceedings at such meeting.

Sec. 2. K.S.A. 75-4318 is hereby repealed.

Sec. 3. This act shall take effect and be in force from and after its publication in the statute book.

furnished

(1)

(2)

7 RS 2810

2-28

Substitute for HOUSE BILL NO. 2988

By Committee on Judiciary

AN ACT concerning farm tenancies; relating to terminating the tenancy; recovery by the tenant of expenses in preparing the land for planting; amending K.S.A. 58-2505 and 58-2506 and repealing the existing sections.

Be it enacted by the Legislature of the State of Kansas:

Section 1. K.S.A. 58-2505 is hereby amended to read as follows: 58-2505. All tenancies from year to year, other than farm tenancies from year to year, may be terminated by at least thirty days' notice in writing, given to the tenant prior to the expiration of the year.

Sec. 2. K.S.A. 58-2506 is hereby amended to read as follows: 58-2506. (a) Except as may be otherwise provided by this section or by a written lease signed by the parties thereto, in cases of tenants occupying and cultivating farms, the notice to terminate such a farm tenancy must be given in writing at least thirty (30) days prior to the first day of March and must fix the termination of the tenancy to take place on the first day of March~~: Provided, however, That~~.

(b) When a notice of termination is given pursuant to subsection (a) after a fall seeded grain crop has been planted, as to that part of the farm which is planted to a fall seeded grain crop on cropland which has been prepared in conformance with normal practices in the area, the notice ~~must fix the termination date of the tenancy~~ shall be construed as fixing the termination of the tenancy of such portion to take place on the day following the last day of harvesting such crop or crops, or August 1, whichever comes first~~: And provided further, That if such~~.

(c) Subject to the provisions of subsection (b), a farm

tenant becomes a tenant from year to year by occupying the premises after the expiration of the term fixed in a written lease, the notice of termination of tenancy must fix the termination of tenancy to take place on the same day of the same month following the service of the notice as the day and month of termination fixed in the original lease under which said tenant first occupied the premises. Such notice shall be written and given to the tenant at least thirty (30) days prior to such termination date.

New Sec. 3. (a) When a notice of termination is given pursuant to subsection (a) or (c) of K.S.A. 58-2506, as amended, and the tenant prior to receiving such notice has (1) performed customary tillage practices or has aplied or furnished fertilizers, herbicides or pest control substances and (2) has not planted the ground to a fall seeded grain crop, the landlord shall pay the tenant the fair and reasonable value of the services furnished and the fertilizers, herbicides or pest control substances furnished and may then take possession of said ground.

(b) Where a farm tenancy is terminated on March 1 pursuant to subsection (a) of K.S.A. 58-2506, as amended, and the tenant planted and obtained a satisfactory stand of alfalfa the preceding fall, the landlord shall pay the tenant the fair and reasonable value of all services performed in preparing and planting the alfalfa and for all of the tenant's expenditures for seed, fertilizer, herbicide or pest control substances.

Sec. 4. K.S.A. 58-2505 and 58-2506 are hereby repealed.

Sec. 5. This act shall take effect and be in force from and after its publication in the statute book.

STATE OF KANSAS

TOPEKA

HOUSE OF
REPRESENTATIVES

2-24

Mr. Chairman and Members of the Committee:

Your Sub-Committee on House Bill 2212 met to consider the bill.

The purpose of this act is to afford a constitutionally sufficient, fair and orderly administrative procedure and review in connection with determinations by municipal authorities which involve constitutionally protected rights of specific persons which are entitled to due process protection under the fourteenth amendment to the U. S. constitution.

This bill would establish an administrative review of determinations by municipalities before going to court. The Sub-Committee felt that adequate remedies exist in the judiciary process in current statutes for hearing and review of actions of municipalities that a person feels are arbitrary and capricious.

The Sub-Committee felt it would undermine procedures larger cities now have for review. The Sub-Committee also felt that smaller communities have no need for such a procedure and would seldom utilize such a procedure.

The Sub-Committee feels that review of this concept would be in order when, and if, the Legislature studies the possibility of enacting a uniform administrative procedures act for state agencies.

Mr. Chairman, your Sub-Committee on House Bill 2212 recommends the bill be reported adversely.

Rep. Patrick B. Augustine

Rep. O. Mills

Rep. Fred Lorentz