

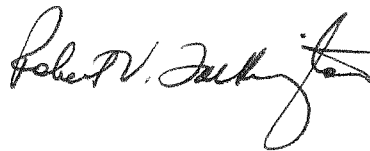
MINUTES OF THE SENATE COMMITTEE ON TRANSPORTATION AND UTILITIES

The meeting was called to order by SENATOR ROBERT V. TALKINGTON at  
Chairperson

9:00 a.m. a.m./p.m. on Thursday, March 3, 1983 in room 254-E of the Capitol.

All members were present except:

All present.



Committee staff present:

Fred Carman  
Hank Avila  
Rosalie Black

Conferees appearing before the committee:

SB 360 - Senator Merrill Werts Wayne Henson, Mayor of Ogden Dan Watkins, Chief Counsel, DOT Bill Cower, Farmer, Ogden	SB 306 - Kim Dewey, Administrative Officer, Sedgwick County Fred Allen, Kansas Assoc. of Counties Bill Kelley, County Commissioner, Geary Co.
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The meeting was called to order by Senator Talkington, Chairman, who introduced Senator Merrill Werts to discuss legislation concerning the City of Ogden.

SENATE BILL 360

Senator Werts asked the Committee to support the construction and maintaining of retention dams by DOT at Ft. Riley to prevent flash flooding in the City of Ogden.

The Mayor of Ogden, Wayne Henson, explained that during previous flooding in Ogden, water was trapped between the new highway bypass and the railroad tracks. Subsequently, water broke through under the tracks and produced a flash flood covering about 25% of the city. (See attachment 1.)

Bill Cower, who farms property east of Ogden that would be effected by the dike, stated that farmers in the area believe that the water should be stopped where it falls.

Acknowledging that highway construction by DOT has aggravated the flooding problem, Dan Watkins said DOT would have agreed to build a dike but the city would not sign an agreement because the railroad would have to be sandbagged when heavy rain occurred.

SENATE BILL 306

Kim Dewey mentioned that the Committee amended and favorably reported HB 2742

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON TRANSPORTATION AND UTILITIES,  
room 254-E, Statehouse, at 9:00 a.m. a.m./p.m. on March 3, 1983

SENATE BILL 306 (continued)

last year which is similar to SB 306 in allowing general obligation bonds to repair county streets and highways. Unlike HB 2742 which referred to Sedgwick County only, SB 306 includes all counties; increases the petition time from 45 to 60 days; and provides an alternative aggregate limitation of \$1,000,000 for smaller counties with low valuations. (See Attachment 2.)

Fred Allen noted that since many counties wanted to be included in such legislation, the idea was presented to the Kansas Association of Counties last November and support is included in the 1983 Kansas County Platform.

Bill Kelley said that Geary County has a definite need to create benefit districts for the improvement of county streets and roads.

SENATE BILL 288 - ACTION

Senator Hein moved that Senate Bill 288 be reported favorable for passage as amended; seconded by Senator Morris and passed. (See Attachment 3.)

SENATE BILL 130 - ACTION

Senator Hein moved that Senate Bill 130 be reported favorable for passage; seconded by Senator Thiessen and passed.

SCR 1616 - ACTION

Senator Hein moved that SCR 1616 be adopted; seconded by Senator Norvell. The Committee passed the motion to adopt the resolution.

The meeting adjourned at 10:02 a.m.

Please PRINT Name, Address, the organization you represent, and the Number of the Bill in which you are interested. Thank you.

NAME	ADDRESS	ORGANIZATION	BILL NO.
Sammy Johnson		Intern	SB 306
Fred Allen	Topeka	KAL	SB 306
K.C. Dewey		Seng. County	SB 306
Vicki R. Menhardt		KIU	SB 306
Arden Durdyn		KMCA	
LARRY MAGILL		INDEP INS. AGENTS	SB 310
MERLE HILL	TOPEKA	KS. GOOD ROADS ASSN.	
Wm Kelly	Junction City	Beary County Commission	SB 306
Edward Maguire		KDOT	360
BILL GREEN		SEC	—
Heraldine Bluthardt		Ogden Co. Council member	360
W. L. Hanson		Ogden Co. Mayor	360
Bill Kauer		Rd #1 Manhattan, Kansas, Farmer	360

# CITY OF OGDEN

Phone 539-0311

OGDEN, KANSAS 66517-0258

Senate Transportation and Utilities Committee  
Thur. 3 March 1983  
Senate Bill No. 360

Senator Talkington, Senators, I am Wayne Henson, Mayor of Ogden and I would like to introduce Mrs. Geraldine Bluthardt, member of the City Council of Ogden, and Mr. Bill Kauer, a landowner and farmer with land immediately outside of Ogden.

Very briefly; our problem in Ogden stems from the fact that before 1976 whenever it rained very much the run off from just North of Ogden collected and ran into a small stream channel and when it rained too much the overflow flooded farm lands just to the east of Ogden. After the highway bypass was built in 1976 the flooding, when it occurred, was diverted to the west of the new highway bypass and directly into our city. The building of the highway bypass put a sort of cloverleaf interchange directly over the bed of the stream and required the moving of a hill and an extensive recontouring of the land. This changing of the contour sends water into the city but it does protect the farmers on the east side of the new highway bypass.

This highway bypass was finished in 1976 and in June 1977 the first and worst flood occurred. Water was trapped between the new highway bypass and the railroad tracks. Water broke through under the tracks and produced a flash flood in Ogden covering about 25% of the city. The city had some damages and had its dump washed away. A private trailer court was extensively damaged and since then KDOT and the owner of the court have settled on damages out of court

Since the flood the city has been negotiating with KDOT about how to prevent any future floods. KDOT has presented us with the plan of a dike and ditch system. This dike would border the city on its eastern edge and would, hopefully, keep flood waters from the city by flooding the farmer's fields that lie between the dike and the new highway.

This plan is not favored by most people in the area because:

1. Many old timers and other in the area are sure that the overflow water will not be diverted by the dike but will flow down both sides of it and nothing will be gained.
2. KDOT insists on giving the dike system to the city. We are a small city of less than 2,000 and a budget of about \$450,000. We have only three maintenance workers. We don't know anything about the care and maintenance of dikes and have very limited equipment to do this with. If the first flood would damage the dike what would we do to prepare for the second and subsequent floods?

3. The Union Pacific main line runs through the dike and the hole would have to be sand bagged to prevent the city from flooding. This would require a store of sand bags and a supply of sand to be maintained near this hole. Then we would need volunteers to be rounded up to do the work. This would require more time than we would probably have.


4. The dike would still flood the farmer's fields.

Both city residents and near by farmers think the best solution would be to prevent the run off from flooding downstream in the first place.

This could be accomplished by a single or a series of check dams upstream. This would keep the water in the stream banks and there would be no need for a dike, ditched, sand bags, volunteers, etc. and the farmer's fields would not be flooded each rainy season. KDOT tells us that they are forbidden by law to spend money on such projects that are not directly and physically connected to the highway system.

We therefore request the Senate bill 360 be passed to allow KDOT to construct these dams or dam and thus relieve the flood problems for both the city and the surrounding farms. We understand that this precedent has been set already with a project here in Topeka.

W. W. Henson



Mayor



# SEDGWICK COUNTY, KANSAS

## DEPARTMENT OF ADMINISTRATION

FOREST TIM WITSMAN  
COUNTY ADMINISTRATOR

COUNTY COURTHOUSE, • 525 N. MAIN, • WICHITA, KANSAS 67203-3703 • TELEPHONE 268-7575

Testimony of Kim C. Dewey, Sedgwick County  
Senate Transportation and Utilities Committee- SB 306  
March 3, 1983

This Committee is quite familiar with the legislation represented by SB 306. This legislation was introduced in the 1982 session as HB 2742. This committee heard, amended, and favorably reported the bill to the Senate.

The legislation in the form of SB 306 is substantially the same as HB 2742 as it left this committee, with the exception that SB 306 does not apply only to Sedgwick County. Since the 1982 session, many counties expressed the desire to be included in such legislation. The item was presented to the 1982 annual conference of the Kansas Association of Counties held last November in Wichita. Support for the legislation is included in the 1983 Kansas County Platform. All 105 counties in Kansas are members of KAC.

This Committee is quite well informed as to the serious condition of county highway systems in Kansas. Many counties have nearly 40% of their systems in urgent need of major repairs or improvements. In our testimony to the Committee last year, we outlined in detail the condition of the 624 mile Sedgwick County road system. Needed repairs and improvements exceeded 40 million dollars with the major portion of the deficient highways located around our major cities and industries. The needs and magnitude of the repairs required for a more populated county may differ from those of smaller counties, but we are all faced with the need for more options to finance the rehabilitation of our systems.

There is a lot of discussion this session as in others regarding possible additional State revenues for highways. We trust and are hopeful that any new highway revenues will be shared with local governments. We are realistic in anticipating only about a 35% cut of any new revenues. This would be most helpful, but simply cannot be expected to meet the needs we face. We also realize that new, additional Federal or State funds will also necessitate more local funds for match if they are to be fully utilized.

SB 306 would provide the counties in Kansas with a useful and needed alternative method of highway finance. The Committee provided, through amendments in 1982, significant safeguards against abuse of the new authority and annual aggregate limitations on the amounts which could be issued. SB 306 is substantially the same as amended in 1982. The three exceptions are: 1. Statewide application. 2. Increasing the petition time from 45 to 60 days. 3. An alternative aggregate limitation of \$1,000,000 to provide for smaller counties with low valuations.

The need for this legislation is just as pressing as last year. We urge the Committee to report SB 306 favorably for passage.

32. Duty of county commissioners to improve road when petition for benefit district filed. State, *ex rel.*, v. Leavenworth County Comm'rs, 128 K. 453, 279 P. 10.

33. Where improvement transferred to highway department, commissioners and department must proceed jointly. State, *ex rel.*, v. Miami County Comm'rs, 131 K. 144, 289 P. 394.

34. Cited in holding county liable for cost of bridges after highway commission takes over road. State, *ex rel.*, v. Sumner County Comm'rs, 132 K. 870, 876, 297 P. 358.

35. Cited in determining liability for improvement within city. State, *ex rel.*, v. State Highway Comm., 137 K. 500, 810, 813, 814, 22 P.2d 969.

36. Cited in determining maximum salary county commissioner may receive. Marshall County Comm'rs v. Cummings, 140 K. 256, 259, 36 P.2d 332.

Annotation to L. 1933, ch. 242, § 1:

37. Commissioners may contract for part of road improvement within city. Dinges v. Board of County Commissioners, 179 K. 35, 36, 37, 292 P.2d 706.

**68-701a.** Filling certain gaps in counties of 130,000 or over; resolution by county commissioners; publication; time for protests. Whenever any board of county commissioners in counties of not less than 130,000 shall desire to permanently improve a road in their county on which a benefit-district petition has not been filed, they shall adopt a resolution to that effect and designate a benefit district and said resolution shall be published in an official county paper circulating in the district affected for three consecutive weeks following its adoption: Provided, That said benefit district so ordered shall not exceed three and one half miles on either side of the road to be constructed: And provided further, That said resolution shall designate the road or section of road to be improved by name and terminal points and other specially fixed locations and shall designate and describe the lands within the proposed benefit district, the type or types of permanent improvement and width or widths of roadway desired and the number of annual assessments to be levied upon the lands in the benefit district in payment thereof, which shall not be less than ten nor more than twenty.

Thirty days after the first publication of such resolution the board of county commissioners shall proceed with the improvement of such road unless a protest signed by legal resident landowners of fifty-one percent of the land in such benefit district shall have been filed with the county clerk: And provided further, That the board of county commissioners shall have no authority by resolution to create a road benefit district as

herein provided nor to improve a road or portion thereof under the provisions of this act, except for the purpose of constructing or permanently improving a road to fill in a gap existing between the ends of two permanently improved highways, or constructing or improving a road in a gap between the ends of a permanently improved highway and a permanently improved street in any city or town within the county or constructing or permanently improving a road in a gap existing between the ends of two sections of a permanently improved highway, or a gap between the ends of two permanently improved sections of a highway: Provided, That such gap does not exceed one and one-eighth miles in length. In improving a road under the provisions of this act in all matters not specifically covered hereby the board of county commissioners shall proceed in accordance with the provisions of article 7 of chapter 68 of the Kansas Statutes Annotated.

History: L. 1925, ch. 216, § 1; March 20.

**68-701b.** Same; time for action to restrain. No action shall be brought to restrain the making of such improvements or payment therefor or creation of such benefit district or levy of taxes or special assessments or issuance of bonds therefor on the grounds of any illegality in said resolution or in any proceedings prior thereto or in the publication thereof unless such action be commenced within sixty days after the date of the first publication of said resolution.

History: L. 1925, ch. 216, § 2; March 20.

**68-702.** Contents of petition under 68-701. The petition shall designate the road or roads to be improved by name and by terminal points and other specially fixed locations, the lands within the proposed benefit district, the type or types of permanent improvement, and width or widths of roadway desired, which types or widths may be different for different sections of the road, and the number of annual assessments to be levied upon the lands in the benefit district in payment thereof, which shall be not less than ten nor more than twenty. The petition may specify more than one type or width of road, and may improve any types that may be acceptable for federal aid, and a maximum and minimum number of annual assessments, leaving the final choice to the board of county commissioners, subject to



therefor, and upon the completion of any other road project upon which such equipment is used in like manner, have an estimate made of the then cash value and charge to such road project the depreciation in such equipment below the estimated value at the time such road project was undertaken. The board of county commissioners may retain any part of such equipment for general road work, and in such case shall estimate with the approval of the state transportation engineer and the county engineer the then cash value of such equipment so retained by the county, and shall charge to such project the depreciation on the portion of the equipment so retained by the county, and such road equipment so retained shall be the property of the county, and the bonds issued therefor shall in proportion be redeemed by a special levy made for such purpose. When the county commissioners shall have no further use for such machinery and equipment the said board shall sell the said machinery and equipment at the best price obtainable and use the funds secured from such sale in retiring the bonds issued for the purchase thereof.

History: R.S. 1923, 68-704; L. 1970, ch. 54, § 80; L. 1975, ch. 427, § 130; Aug. 15.

Source or prior law:

L. 1909, ch. 201, § 4; L. 1917, ch. 265, § 4; L. 1919, ch. 246, § 4; L. 1921, ch. 218, § 1.

Revision note, 1923:

L. 1921, ch. 218, § 1 revised to conform to general bond law. [See ch. 10, art. 1.]

Research and Practice Aids:

Counties—174; Highways—113(2).  
Hatcher's Digest, Highways §§ 35, 37 to 41, 44.  
C.J.S. Counties § 261; Highways § 208.  
Road contractors,  
Bond, Vernon's Kansas Forms § 9446.  
Notice, Vernon's Kansas Forms § 9445.

CASE ANNOTATIONS

1. Petition signed conditionally; landowner may enjoin construction; when. *Hines v. Barton County*, 106 K. 682, 686, 189 P. 368; *Hines v. Barton County*, 109 K. 733, 736, 202 P. 77.

2. Original proceedings abandoned; further proceedings held void. *Hines v. Barton County*, 109 K. 733, 736, 202 P. 77.

3. Order without giving ten days' public notice held void. *Railway Co. v. Barton County*, 110 K. 310, 311, 303 P. 698.

4. Injunction brought within thirty days from date of final order. *Railroad Co. v. Mitchell County*, 110 K. 582, 583, 204 P. 729.

5. Railroad right-of-way properly assessed to aid in costs of road improvement. *Railway Co. v. Labette County*, 113 K. 423, 215 P. 447; *Railroad Co. v. Jefferson County*, 114 K. 156, 160, 217 P. 315.

6. Cited in construing L. 1909, ch. 182, § 662. *Weber Implement & A. Co. v. Dubach*, 132 K. 309, 311, 295 P. 979.

7. Cited in determining maximum salary county commissioner may receive. *Marshall County Comm'rs v. Cummings*, 140 K. 256, 259, 36 P.2d 332.

8. Contention action to restrain not timely instituted hereunder not sustained. *Dinges v. Board of County Commissioners*, 179 K. 35, 39, 292 P.2d 706.

**68-705.** Supervision of benefit-district road work. All work done and materials furnished shall be under the supervision and inspection of the county engineer, the state transportation engineer or a competent and experienced highway engineer employed by the county, and shall be in conformity with the plans and specifications and the contract therefor. The acceptance of any work or material by such engineer shall not bind the county nor excuse the contractor for failure to comply with such contract. No changes shall be made except by written contract with the board of county commissioners, approved by the state transportation engineer.

History: L. 1909, ch. 201, § 5; L. 1917, ch. 265, § 5; R.S. 1923, 68-705; L. 1975, ch. 427, § 131; Aug. 15.

CASE ANNOTATIONS

1. Petition granted; subsequent petition for change in material; section construed. *The State, ex rel., v. Allen County*, 110 K. 596, 598, 204 P. 695.

**68-706.** Apportionment of costs; certain counties; special assessments; city benefits; bonds; tax levies. Upon the completion of any improvement under the provision of this act the county commissioners shall meet at their office and apportion the cost thereof as follows:

(a) If all or any portion of said road improvement is entitled to and does receive federal or state aid or donations, the same shall be applied to the cost of the improvement for the purpose and to the extent for which the same was given.

(b) In counties having a population of more than sixteen thousand (16,000) and less than twenty thousand (20,000) with an assessed taxable tangible valuation of not less than forty-four million dollars (\$44,000,000) nor more than fifty-two million dollars (\$52,000,000) and that have adopted the county road unit system, the remainder of the cost shall be apportioned: Seventy-five percent (75%) to the county; and twenty-five percent (25%) to the taxable property in which the benefit district is located. In all

other counties the remainder of the cost shall be apportioned: Sixty percent (60%) to the county; twelve and one-half percent (12½%) to the taxable property within the township or townships in which the benefit district is situated, divided according to the area of the benefit district in each township; twelve and one-half percent (12½%) to the taxable property within the township or townships in which the road is located divided according to the length of road in each township: *Provided*, That when the road is located on the township line or within eighty rods of the township line between two townships it shall be considered as located one-half in each township for the purpose of dividing the apportionment; and all cities of the third class shall be a part of the township and subject to the township tax to pay for said improvements; and fifteen percent (15%) among the several tracts of land within the benefit district designated in the map, according to the benefits accruing to the real property and improvements thereon within the limits shown by said map.

When said apportionment to the land within the benefit district is determined, the county commissioners shall appoint a time for holding a special session to hear any complaint that may be made as to the apportionment of cost, and the county clerk shall mail a written or printed notice to the owner or owners of any tract of land liable to special assessments, which notice shall set forth the time for hearing complaints and the amount assessed against each tract within the benefit district, and the last day for paying the assessment in full. Such notice shall be mailed at least two weeks prior to the time for hearing the complaints.

At the hearing the commissioners may alter or change the apportionment for good cause shown. If the amount assessed to any tract is changed, the county clerk shall mail a second notice to the owner of such tract, which shall set forth the amount assessed, and the last day for paying the assessment in full. If the owner of any tract within the benefit district shall pay the full amount assessed against such tract within thirty days after the issuance of the first notice, such tract shall not be subject to any further annual special assessments for such improvement.

Upon completion of a section of road which forms a part of the improvement of a

road petitioned for under the provisions of this act, or the grading, draining and culverts forming a part of the improvement, under a petition specifying that the road shall be hard-surfaced, the board of county commissioners may levy assessments against the lands benefited thereby for eighty percent (80%) of the benefit district's share of the cost of the completed work, and shall levy additional assessments for the remainder of the cost, equitably adjusting the apportionments when the entire improvement is completed. The board of county commissioners may levy assessments against the land in the benefit district at any time after a contract has been awarded or work started with county's forces, using the approved estimate of cost as a basis for apportioning the cost: *Provided*, That when all the improvement specified in the petition is completed any deficiency in the benefit district's share of the cost shall be apportioned or surplus refunded on the same basis as the original apportionment.

In the event that a benefit-district road is constructed to the city limits of a city of the third class, the city officials shall apply to the board of county commissioners for assistance in the continuation of said improvement through the city, or from the end of the benefit-district road to the center of the city. The board of county commissioners shall then appropriate from the county funds, or issue bonds if necessary, to pay for fifty percent (50%) of the cost of the improvement after deducting all federal and state aid and donations, and the city at large the remaining fifty percent (50%) apportioned on an equitable ratio among the taxpayers, as prescribed by the council or other governing bodies, and may issue city bonds to pay the city's share of the cost of such improvements, unless the city council decided to pave and does pave the streets to be included in such improvement with pavement of equal quality under the law authorizing paving in such cities. In such case the county's share of improving such city street as provided herein shall be applied toward the cost of such pavement: *Provided further*, That the type and width shall be the same as constructed outside the city limits. If the city officials desire to use a different width or method of construction, the additional cost of such width and method shall be borne by the city.

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#### History:

ch. 249, § 1;  
ch. 246, § 5;  
68-706; L. 1  
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304, 305 (1955)

#### Annotation to I

1. State aid in  
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2. Apportionm  
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169, 170, 172 P

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3. Act held c  
*rel.*, v. Raub, 16

4. Levy of tax  
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434, 436, 191 P

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9. Assessment

When a benefit district hard-surfaced road is constructed alongside the corporate limits of any city the city shall pay fifty percent (50%) of the cost of the construction thereof, apportioned on an equitable ratio among the taxpayers, as prescribed by the council or other governing bodies, and may issue city bonds to pay the city's share of the cost of such improvements: *Provided further*, That if the land adjoining the city limits and abutting or adjacent to the hard-surfaced road and within one mile thereof is not in the benefit district, it may be so considered by the board of county commissioners and be taxed in like ratio as other lands in the benefit district and township assessments.

All bonds issued or taxes levied under the provisions of this section shall be in addition to all other tax levies or bond issues authorized by law.

**History:** L. 1909, ch. 201, § 6; L. 1911, ch. 249, § 1; L. 1917, ch. 265, § 6; L. 1919, ch. 246, § 5; L. 1921, ch. 218, § 2; R.S. 1923, 68-706; L. 1927, ch. 252, § 1; L. 1951, ch. 387, § 1; June 30.

#### Research and Practice Aids:

Highways—140.

Hatcher's Digest, Highways §§ 38, 93.

C.J.S. Highways § 298.

#### Law Review and Bar Journal References:

Case in annotation No. 14 below discussed in 1953-55 survey of municipal law, Earl B. Shurtz, 4 K.L.R. 304, 305 (1955).

#### CASE ANNOTATIONS

Annotation to L. 1911, ch. 249, § 1:

1. State aid in construction; act unconstitutional. *The State, ex rel., v. Knapp*, 99 K. 852, 853, 163 P. 181.

Annotation to L. 1917, ch. 265, § 6:

2. Apportionment of costs; notice to taxpayers; section construed. *Washburn v. Shawnee County*, 103 K. 169, 170, 172 P. 997.

Annotations to L. 1919, ch. 246, § 5:

3. Act held constitutional and valid. *The State, ex rel., v. Raub*, 106 K. 196, 199, 186 P. 989.

4. Levy of taxes before completion of improvements; section construed. *The State, ex rel., v. Stewart*, 107 K. 434, 436; 191 P. 269.

5. Proper measure of landowner's damage considered. *Anderson v. Douglas County*, 107 K. 655, 657, 193 P. 329.

6. Proportionment of costs chargeable to county. *Rowland v. Reno County*, 108 K. 440, 448, 195 P. 868.

Annotations to L. 1921, ch. 218, § 2:

7. Levy of taxes may be made when improvements partially completed. *Hamm v. Jefferson County*, 113 K. 301, 303, 214 P. 105.

8. Railroad right-of-way properly assessed to aid in costs of road improvement. *Railway Co. v. Labette County*, 113 K. 423, 215 P. 447.

9. Assessment on personal property for cost of road

improvement not authorized. *Railway Co. v. Labette County*, 113 K. 423, 215 P. 447.

10. City liable for one-half cost of road improved along corporate limits. *Mitchell County v. City of Beloit*, 114 K. 825, 827, 220 P. 1020.

11. Act construed in connection with 68-417 in determining reimbursement of benefit district. *State, ex rel., v. State Highway Comm.*, 130 K. 456, 458, 286 P. 244.

Annotations to L. 1927, ch. 252, § 1:

12. Proportion highway commission shall pay for benefit district. *State, ex rel., v. Johnson County Comm'rs*, 131 K. 403, 410, 411, 292 P. 921.

13. Cited in determining liability for improvement within city. *State, ex rel., v. State Highway Comm.*, 137 K. 800, 814, 22 P.2d 969.

Annotations to L. 1951, ch. 387, § 1:

14. City's apportionment of road improvement costs against real estate held invalid. *Johnston v. City of Coffeyville*, 175 K. 357, 358, 360, 361, 264 P.2d 474.

15. Construed; county may construct part of improvement within city, when. *Dinges v. Board of County Commissioners*, 179 K. 35, 36, 38, 292 P.2d 706.

**68-707.** Apportionment when costs unusually large. Whenever in the judgment of the board of county commissioners any part of the road in addition to being of public utility, shall be of general importance to the county, the improvement of which by reason of sand, creeks, heavy grades or other reasons would necessarily incur unusual expense, the board of county commissioners may make an order to that effect and charge not exceeding sixty percent of the expense of the improvement to the county, the expense to the lands within the benefit district to be decreased in proportion.

**History:** L. 1909, ch. 201, § 7; L. 1917, ch. 265, § 7; March 3; R.S. 1923, 68-707.

**68-708.** Special aid fund for benefit-district roads. The county commissioners may receive subscriptions and donations in money and real or personal property which shall be applied in the construction or the improvement of said road. Any aid or donation by the state or the United States, or by cities, or from any other source shall be placed in a special fund for such improvements and shall be applied by the board of county commissioners before apportioning the remainder of the cost between the county, township and benefit district. Such state and federal aid and donations and special assessments paid in full shall be used in paying off the warrants and interest accumulating thereon which were issued during the progress of the improvement.

**History:** L. 1909, ch. 201, § 8; L. 1911,

ch. 249, § 2; L. 1917, ch. 265, § 8; March 3; R.S. 1923, 68-708.

**Research and Practice Aids:**

Hatcher's Digest, Highways §§ 31, 93.

**CASE ANNOTATIONS**

1. County authorized to accept subscription in aid of benefit-district improvement. *Neosho County Comm'rs v. Burdick*, 120 K. 698, 244 P. 866.

**68-709.** Bond issues; tax levy; use of general roads funds; additional county levy; when road not constructed. After the approved estimates have been filed with the county clerk and the cost to be assessed against the taxable property of the county and the taxability of the benefit district has been approximately determined by deducting from the total estimated cost all donations, subscriptions, state aid or federal aid that have been granted or promised, the board of county commissioners may issue from time to time as required, bonds of the county, bearing not to exceed six percent interest, payable at the times fixed in the order allowing the petition: *Provided*, The total amounts of bonds issued previous to completion of the improvement shall not exceed the amount of the estimated cost to be taxed against the county and townships and the several tracts of land within the benefit district. The principal of said bonds shall mature and be payable as nearly as practicable in equal amounts annually, the last of which shall run not longer than twenty years from the date of the first bond issued for the improvement. Said bonds shall be issued in series.

Said bonds shall be disposed of by the county board in the manner provided by law and the proceeds thereof shall be deposited with the county treasurer in a special fund for the improvement. After completion of the improvement, the application of state and federal aid, the ascertainment of apportionments to be charged against the taxable property in the county and township and the amount assessed against the several tracts of land within the benefit district, the board of county commissioners shall issue bonds of the county in the same manner as before provided in this section and the proceeds thereof shall be used in paying the remaining outstanding warrants, including interest thereon, issued for the improvement.

After any such bonds are issued the board of county commissioners shall make an an-

nual levy upon all the taxable property of the county and the taxable property of the township and upon the lands within the benefit district, according to the apportionment of cost fixed upon said lands in all cases in proportion to the respective liabilities which tax shall be sufficient to pay the bonds falling due each year and the interest upon outstanding bonds; these bonds shall be in addition to any other bonds which the county may by law be authorized to issue: *Provided*, That the board may in its discretion pay the county's proportion of the costs out of the general fund and road fund of the county if such funds are sufficient for that purpose after deducting all other proper charges against said funds, and after such payment no general county levy shall be made for payment of the bonds, or if any portion of the county's proportion of the cost is paid in such manner, the county levy shall be reduced proportionately thereto: *Provided further*, That the township board or boards of the township or townships affected by the benefit district may in their discretion, deposit with the board of county commissioners sufficient funds to pay the township's proportion or any part thereof of the cost of the road out of the general funds or road fund of said township or townships, if such funds are sufficient for the purpose, and if any of the township's proportion of the cost is paid in such manner, the township levy shall be reduced proportionately thereto: *Provided further*, That the board of county commissioners are hereby authorized and empowered to levy an additional county levy against the taxable property of the county in an amount not to exceed one mill in order to pay the county's proportion of the benefit-district road without the issuance of bonds and the board of township highway commissioners are authorized to levy not to exceed one mill against the taxable property of the township for the purpose of paying the township's share of the cost of the benefit-district road without the issuance of bonds.

There will be no levy or collection of double taxes if several petitions have been filed to change the course of one continuous road and where the course of such road has been changed by the filing of motion or petitions and it is not necessary to construct a part of the road contained in the first petition to complete the road, such unnec-

essary part of no taxes shall thereof.

**History:** L. ch. 249, § 3; L. ch. 246, § 6; L. 68-709; L. 1917, ch. 265, § 8.

**Research and Practice Aids:** Hatcher's Digest, Counties—192. C.J.S. Counties

**C.** Annotation to L.

1. Section cited in *Venson v. Shawnee*.

**Annotations to L.** 1919, ch. 246.

2. Bonds for road, *State, ex rel., v. Board of County Comm'rs*, 191 P. 269.

3. Section construed in *State, ex rel., v. Board of County Comm'rs*, 191 P. 269.

4. Road improvement, *Rowland v. Reno*, 191 P. 269.

5. Change in location, *State, ex rel., v. Allen*, 191 P. 269.

6. Power of county commissioners to change location considered, 110 K. 596, 598.

7. Duty of county commissioners when State, *ex rel., v. Board of County Comm'rs*, 403, 409, 292 P.

8. Cited in *State, ex rel., v. Board of County Comm'rs*, 191 P. 269.

9. Cited in *State, ex rel., v. Board of County Comm'rs*, 191 P. 269.

**68-710.** A proceeding.

apply in all cases a highway machinery here provisions of

of 1917, Kansas, 1919, which project prior to the

**History:** L. R.S. 1923, 68-

\* For location 246, see *Comparative Annotations Volume*.

**68-711.** M. roads improve act shall there in

in

road

264

REPORTS OF STANDING COMMITTEES

MR. PRESIDENT:

Your committee on Transportation and Utilities

Recommends that Senate Bill No. 288

"AN ACT concerning inspection of motor vehicles; amending K.S.A. 8-198 and 8-1759 and repealing the existing sections; also repealing K.S.A. 8-1750 to 8-1758, inclusive, 8-1759a and 8-1760."

Be amended:

On page 7, in line 242, after "highway", by inserting "patrol"; following line 242, by inserting a new section as follows:

"Sec. 4. K.S.A. 8-1759a is hereby amended to read as follows: 8-1759a. (a) Uniformed members of the highway patrol, at any time upon reasonable cause to believe that a vehicle is unsafe or not equipped as required by law, or that its equipment is not in proper adjustment or repair, may require the driver of such vehicle to stop and submit such vehicle to an inspection and such test with reference thereto as may be appropriate.

(b) In the event a vehicle is found to be in unsafe condition or any required part or equipment is not present or in proper repair and adjustment, the member of the highway patrol shall give a written notice to the driver and send a copy to the superintendent of the highway patrol. ~~Said~~ Such notice shall require that the vehicle be placed in safe condition and its equipment in proper repair and adjustment as soon as practicably ~~specifying--the--particulars--with--reference--thereto, and shall require that an official certificate of approval be obtained from an inspection station within thirty (30) days.~~

(c) In the event any such vehicle is, in the reasonable judgment of the member of the highway patrol, in such condition that further operation would be hazardous, such member of the

highway patrol may require, in addition, that the vehicle not be operated under its own power or that it be driven to the nearest garage or other place of safety.

~~(d) Every owner or driver shall comply with the notice and secure an official certificate of approval from an inspection station within thirty (30) days or the vehicle shall not be operated on the highways of this state.~~

Violation of this section is a class A misdemeanor.";

By renumbering sections 4 and 5 as sections 5 and 6;

In the title, in line 18, by striking "and 8-1759" and inserting ", 8-1759 and 8-1759a"; in line 19, by striking "8-1759a"

And the bill be passed as amended.

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Chairperson