

MINUTES OF THE SENATE COMMITTEE ON TRANSPORTATION AND UTILITIES

The meeting was called to order by Sen. Bill Morris at
Chairperson

9:00 a.m. ~~pm~~ on April 10, 1985 in room 254-E of the Capitol.

All members were present ~~except~~.

Committee staff present:

Hank Avila, Legislative Research Department
Fred Carman, Revisor
Louise Cunningham, Secretary

Conferees appearing before the committee:

Harley Duncan, Secretary, Department of Revenue
Tom Hatten, Department of Revenue
John Smith, Division of Vehicles, Department of Revenue
Billy McCray, Director of Minority Business, KDED

DISCUSSION ON H.B. 2570 - Availability of diversion records to courts and prosecuting attorneys.

Sen. Francisco said S.B. 204 was a delegation bill having to do with diversion agreements. It had been passed in the Senate 40-0. He made a motion to amend S.B. 204 into H.B. 2570. Motion was seconded by Sen. Hayden. Motion carried. A copy of S.B. 204 is attached. (Attachment 1).

Secretary Harley Duncan said he had testified on the previous day and had two areas of concern pertaining to certified records. The Department could lose a prosecution on a technicality. He suggested two changes. (See Attachment 4 on 4-9-85). Fred Carman said it was a serious matter to make these changes in the statutes. It would be a major policy change and he wanted the committee to be aware of it.

DISCUSSION ON H.B. 2569 - Court review of driver's license suspension or revocation.

Tom Hatten, Department of Revenue, said this bill was requested because there was confusion relating to cancellation, suspension and revocation of drivers' licenses. Also submitted was a letter to Rep. Jerry Friedeman from the law offices of Hagen, Bates and Suelter dated March 4, 1985 regarding the problems caused by people driving without a valid Kansas driver's license. A copy of this letter is attached. (Attachment 2). Fred Carman said it would be very expensive to have the Department of Revenue handle persons driving without valid licenses. An alternative solution would be to have the courts take care of it. He had drawn up a proposed amendment. (Attachment 3). This would help stop people from driving without a license. It would not change H.B. 2569 but would be the proper vehicle for this amendment. There was some discussion of why the provisions of H.B. 2569 were not handled by administrative procedure. Mr. Hatten said because of manpower and resources it is not presently feasible but was down the road three or four years. The Chairman appointed a subcommittee consisting of Sen. Frey, Chairman; Senators Walker and Norvell, to study H.B. 2569.

ACTION ON H.B. 2462 - Kansas highway contractor development act.

Billy McCray, KDED, spoke in support of this bill and said it would leave discretion to the Department of Transportation to set aside certain construction contracts for disadvantaged businesses. A copy of his statement is attached. (Attachment 4). The Chairman explained to the committee that there had been some opposition from the contractor's association but he had had a meeting with a representative of the contractors, Mr. McCray and Secretary Kemp and they agreed to pass this bill if there were assurances that no attempt would be made to amend this bill on the floor of the Senate. A motion was made by Sen. Norvell and was seconded by Sen. Martin to recommend H.B. 2462 favorably for passage. Motion carried.

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON TRANSPORTATION AND UTILITIES,
room 254-E, Statehouse, at 9:00 a.m. ~~p.m.~~ on April 10, 1985

ACTION ON H.B. 2451 - Regulation of traffic, procedure for enforcement of municipal traffic laws.

Sen. Norvell was concerned about lines 99-102 in H.B. 2451 which would give authority to take a person to jail. He said officers have better things to do than to jail persons who refuse to sign a traffic ticket. Sen. Norvell made a motion to delete the italicized words in lines 0101 and 0102 in H.B. 2451. Motion was seconded by Sen. Martin. Motion carried.

John Smith, Department of Revenue, said they were not necessarily against the bill but had some problems with Section 2 on page 2 which would increase suspensions. It would increase their workload quite a bit. Many people fail to appear and they are resuspended. They want the court to at least send a letter to the driver before asking the Department for a suspension. He submitted two amendments to do this, one which would also require a fine of \$25.00. A copy of these amendments are attached. (Attachment 5).

A motion was made by Sen. Frey to recommend H.B. 2451, as amended, favorably for passage. Seconded by Sen. Vidricksen. Motion carried.

ACTION ON H.B. 2562 - Franchise fees.

Chris McKenzie had a proposed amendment to H.B. 2562 which would rule out the "favored nations clause" in the future. This amendment would make it retroactive in the case of KP&L and Gas Service Company because of the take-over. A copy of these amendments are attached. (Attachment 6). A motion was made by Sen. Hayden and was seconded by Sen. Walker to adopt the proposed amendments. Motion carried. A motion was made by Sen. Walker to recommend H.B. 2562 as amended, favorably for passage. Seconded by Sen. Vidricksen. Motion carried.

CONSIDERATION OF H.B. 2202 - Natural gas regulation by KCC.

Sen. Frey said he was concerned about New Sec. 2 on Page 3 and wanted to know who requested it. Chris McKenzie said the League of Municipalities had requested it and was the same as electric utilities.

A motion was made by Sen. Frey to strike New Sec. 2. This was seconded by Sen. Thiessen. Motion carried.

After more discussion a motion was made by Sen. Norvell to adjourn. Motion carried.

Meeting adjourned at 10:00 a.m.

SENATE TRANSPORTATION AND UTILITIES COMMITTEE

Date 4-10-85 Place 254-E Time 9:00

GUEST LIST

<u>NAME</u>	<u>ADDRESS</u>	<u>ORGANIZATION</u>
Kevin Robertson	TOPEKA	KPL GAS SERVICE
BILL PERDUE	"	" " "
Rick Kready	"	" " "
John Jordison	Omaha	Peoples Nat Gas
K Langland	Eagan, Mn	" " "
LOW STANTON	TOPEKA	Northern Natural Gas
TREVA POTTER	TOPEKA	" " "
Alonzo Harrison	TOPEKA	ADBE
Billy McCray	TOPEKA	KDED
Tom August	TOPEKA	KDED
Robert C. Goodman	TOPEKA	Mid Cont Oil & Gas
Don Grant	TOPEKA	KCCI
Tom Whitaker	TOPEKA	Ks Motor Carriers Assn.
Don Schmitt	TOPEKA	KTEGA -
DAN RAMLOW	TOPEKA	KS CONTRACTORS ASSN.
Tom Hatten	TOPEKA	Dept. of Rev.
Don EAS	"	"
John W Smith	TOPEKA	Depty of Revenue

SENATE BILL No. 204

By Francisco, Anderson, Daniels, Morris and Yost

2-12

0017 AN ACT concerning criminal procedure; relating to diversion
0018 agreements; amending K.S.A. 12-4412, 12-4416 and 12-4418
0019 and K.S.A. 1984 Supp. 22-2909 and 22-2911 and repealing the
0020 existing sections.

0021 *Be it enacted by the Legislature of the State of Kansas:*

0022 Section 1. K.S.A. 12-4412 is hereby amended to read as fol-
0023 lows: 12-4412. (a) Any diversion agreement entered into in lieu
0024 of further criminal proceedings on a complaint alleging a viola-
0025 tion of a city ordinance shall include: (1) The defendant's full
0026 name; (2) the defendant's full name at the time the complaint
0027 was filed, if different from the defendant's current name; (3) the
0028 defendant's sex, race and date of birth; (4) the crime with which
0029 the defendant is charged; (5) the date the complaint was filed;
0030 and (6) the ~~district~~ *municipal* court with which the agreement is
0031 filed.

0032 (b) The city attorney shall forward to the Kansas bureau of
0033 investigation a copy of a diversion agreement entered into by the
0034 city attorney only when required by rules and regulations
0035 adopted by the director of the bureau pursuant to K.S.A. 22-4704
0036 and amendments thereto. The copy of the agreement shall be
0037 made available upon request to any county, district or city
0038 attorney who subsequently considers diversion of the person.

0039 (c) As used in this section, "complaint" includes a citation or
0040 notice to appear.

0041 Sec. 2. K.S.A. 12-4416 is hereby amended to read as follows:
0042 12-4416. (a) A diversion agreement shall provide that if the
0043 defendant fulfills the obligations of the program described
0044 therein, as determined by the city attorney, the city attorney
0045 shall act to have the criminal charges against the defendant

ATT. ①
4/10/95

0046 dismissed with prejudice. The diversion agreement shall in-
0047 clude specifically the waiver of all rights under the law or the
0048 constitution of Kansas or of the United States to a speedy ar-
0049 raignment, preliminary examinations and hearings, and a speedy
0050 trial, and the right to trial by jury. The diversion agreement may
0051 include, but is not limited to, provisions concerning payment of
0052 restitution, including court costs and diversion costs, residence
0053 in a specified facility, maintenance of gainful employment, and
0054 participation in programs offering medical, educational, voca-
0055 tional, social and psychological services, corrective and preven-
0056 tive guidance and other rehabilitative services. The diversion
0057 agreement shall state: (1) The defendant's full name; (2) the
0058 defendant's full name at the time the complaint was filed, if
0059 different from the defendant's current name; (3) the defendant's
0060 sex, race and date of birth; (4) the crime with which the defend-
0061 ant is charged; (5) the date the complaint was filed; and (6) the
0062 municipal court with which the agreement is filed.

0063 (b) If a diversion agreement is entered into in lieu of further
0064 criminal proceedings on a complaint alleging an alcohol related
0065 offense, the diversion agreement shall include a stipulation,
0066 agreed to by the defendant and the city attorney, of the facts
0067 upon which the charge is based and a provision that if the
0068 defendant fails to fulfill the terms of the specific diversion
0069 agreement and the criminal proceedings on the complaint are
0070 resumed, the proceedings, including any proceedings on appeal,
0071 shall be conducted on the record of the stipulation of facts
0072 relating to the complaint. In addition, the agreement shall in-
0073 clude a requirement that the defendant:

0074 (1) Pay the minimum fine equal to that required by K.S.A.
0075 8-1567, and amendments thereto; for a first offense or, in lieu of
0076 payment of the fine, perform community service specified by the
0077 agreement, consonant with K.S.A. 8-1567, and amendments
0078 thereto; and

0079 (2) enroll in and successfully complete an alcohol and drug
0080 safety action program as provided in K.S.A. 8-1008 *and amend-*
0081 *ments thereto* or a treatment program as provided in K.S.A.
0082 8-1008 *and amendments thereto*, or both such education and

0083 treatment programs, as specified by the agreement, and pay the
0084 assessment required by K.S.A. 8-1008 *and amendments thereto.*

0085 (c) If the city attorney elects to offer diversion in lieu of
0086 further criminal proceedings on the complaint and the defendant
0087 agrees to all of the terms of the proposed agreement, the diver-
0088 sion agreement shall be filed with the municipal court and the
0089 municipal court shall stay further proceedings on the complaint.
0090 If the defendant declines to accept diversion, the municipal
0091 court shall resume the criminal proceedings on the complaint.

0092 (d) *The city attorney shall forward to the division of vehicles*
0093 *of the state department of revenue a copy of the diversion*
0094 *agreement at the time such agreement is filed with the municipi-*
0095 *pal court. The copy of the agreement shall be made available*
0096 *upon request to any county, district or city attorney or court.*

0097 Sec. 3. K.S.A. 12-4418 is hereby amended to read as follows:
0098 12-4418. (a) If the city attorney finds at the termination of the
0099 diversion period or any time prior thereto that the defendant has
0100 failed to fulfill the terms of the specific diversion agreement, the
0101 city attorney shall inform the municipal court of such finding and
0102 the municipal court, after finding that the defendant has failed to
0103 fulfill the terms of the specific diversion agreement at a hearing
0104 thereon, shall resume the criminal proceedings on the com-
0105 plaint.

0106 (b) If the defendant has fulfilled the terms of the diversion
0107 agreement, the municipal court shall dismiss with prejudice the
0108 criminal charges filed against the defendant.

0109 (c) ~~A record of the fact that an individual has participated in~~
0110 ~~diversion in lieu of further criminal proceedings on a complaint~~
0111 ~~alleging an alcohol related offense shall be forwarded to the~~
0112 ~~division of vehicles of the department of revenue and shall be~~
0113 ~~made available to any city, county or district attorney or court for~~
0114 ~~use in proceedings conducted under K.S.A. 8-285 or 8-1567, and~~
0115 ~~amendments to these sections, or any alcohol related offense.~~
0116 *The city attorney shall forward to the division of vehicles of the*
0117 *state department of revenue a record of the fact that a defend-*
0118 *ant did or did not fulfill the terms of a diversion agreement*
0119 *required to be filed under subsection (d) of K.S.A. 12-4416 and*

0120 *amendments thereto. Such record shall be made available to any*
0121 *county, district or city attorney or court.*

0122 Sec. 4. K.S.A. 1984 Supp. 22-2909 is hereby amended to read
0123 as follows: 22-2909. (a) A diversion agreement shall provide that
0124 if the defendant fulfills the obligations of the program described
0125 therein, as determined by the county or district attorney, the
0126 county or district attorney shall act to have the criminal charges
0127 against the defendant dismissed with prejudice. The diversion
0128 agreement shall include specifically the waiver of all rights
0129 under the law or the constitution of Kansas or of the United
0130 States to a speedy arraignment, preliminary examinations and
0131 hearings, and a speedy trial, and in the case of diversion under
0132 subsection (c), waiver of the right to trial by jury. The diversion
0133 agreement may include, but is not limited to, provisions con-
0134 cerning payment of restitution, including court costs and diver-
0135 sion costs, residence in a specified facility, maintenance of
0136 gainful employment, and participation in programs offering
0137 medical, educational, vocational, social and psychological ser-
0138 vices, corrective and preventive guidance and other rehabilita-
0139 tive services.

0140 (b) The diversion agreement shall state: (1) The defendant's
0141 full name; (2) the defendant's full name at the time the complaint
0142 was filed, if different from the defendant's current name; (3) the
0143 defendant's sex, race and date of birth; (4) the crime with which
0144 the defendant is charged; (5) the date the complaint was filed;
0145 and (6) the district court with which the agreement is filed.

0146 (c) If a diversion agreement is entered into in lieu of further
0147 criminal proceedings on a complaint alleging a violation of
0148 K.S.A. 8-1567 and amendments thereto, the diversion agreement
0149 shall include a stipulation, agreed to by the defendant and the
0150 county or district attorney, of the facts upon which the charge is
0151 based and a provision that if the defendant fails to fulfill the
0152 terms of the specific diversion agreement and the criminal pro-
0153 ceedings on the complaint are resumed, the proceedings, in-
0154 cluding any proceedings on appeal, shall be conducted on the
0155 record of the stipulation of facts relating to the complaint. In
0156 addition, the agreement shall include a requirement that the

0157 defendant:

0158 (1) Pay the minimum fine required by K.S.A. 8-1567 and
0159 amendments thereto for a first offense or, in lieu of payment of
0160 the fine, perform community service specified by the agreement,
0161 in accordance with K.S.A. 8-1567 and amendments thereto; and

0162 (2) enroll in and successfully complete an alcohol and drug
0163 safety action program as provided in K.S.A. 8-1008 *and amend-*
0164 *ments thereto* or a treatment program as provided in K.S.A.
0165 8-1008 *and amendments thereto*, or both such education and
0166 treatment programs, as specified by the agreement, and pay the
0167 assessment required by K.S.A. 8-1008 *and amendments thereto*.

0168 (d) If the county or district attorney elects to offer diversion
0169 in lieu of further criminal proceedings on the complaint and the
0170 defendant agrees to all of the terms of the proposed agreement,
0171 the diversion agreement shall be filed with the district court and
0172 the district court shall stay further proceedings on the complaint.
0173 If the defendant declines to accept diversion, the district court
0174 shall resume the criminal proceedings on the complaint.

0175 (e) *Except diversion agreements reported under subsection*
0176 *(f), the county or district attorney shall forward to the Kansas*
0177 *bureau of investigation a copy of the diversion agreement at the*
0178 *time such agreement is filed with the district court. The copy of*
0179 *the agreement shall be made available upon request to any*
0180 *county, district or city attorney or court.*

0181 (f) *At the time of filing the diversion agreement with the*
0182 *district court, the county or district attorney shall forward to*
0183 *the division of vehicles of the state department of revenue a*
0184 *copy of any diversion agreement entered into in lieu of further*
0185 *criminal proceedings on a complaint alleging a violation of*
0186 *K.S.A. 8-1567 and amendments thereto. The copy of the agree-*
0187 *ment shall be made available upon request to any county,*
0188 *district or city attorney or court.*

0189 Sec. 5. K.S.A. 1984 Supp. 22-2911 is hereby amended to read
0190 as follows: 22-2911. (a) If the county or district attorney finds at
0191 the termination of the diversion period or any time prior thereto
0192 that the defendant has failed to fulfill the terms of the specific
0193 diversion agreement, the county or district attorney shall inform

0194 the district court of such finding and the district court, after
0195 finding that the defendant has failed to fulfill the terms of the
0196 specific diversion agreement at a hearing thereon, shall resume
0197 the criminal proceedings on the complaint.

0198 (b) If the defendant has fulfilled the terms of the diversion
0199 agreement, the district court shall dismiss with prejudice the
0200 criminal charges filed against the defendant.

0201 (c) ~~Except diversion agreements reported under subsection~~
0202 ~~(d),~~ The county or district attorney shall forward to the Kansas
0203 bureau of investigation a ~~copy of the diversion agreement. The~~
0204 ~~copy of the agreement~~ *record of the fact that a defendant did or*
0205 *did not fulfill the terms of a diversion agreement required to be*
0206 *filed under subsection (e) of K.S.A. 22-2909 and amendments*
0207 *thereto. Such record shall be made available upon request to any*
0208 *county, district or city attorney who subsequently considers*
0209 *diversion of the person or court.*

0210 (d) ~~A record of the fact that an individual has participated in~~
0211 ~~diversion in lieu of further criminal proceedings on a complaint~~
0212 ~~alleging a violation of K.S.A. 8-1567 and amendments thereto~~
0213 ~~shall be forwarded to the division of vehicles of the department~~
0214 ~~of revenue and~~ *The county or district attorney shall forward to*
0215 *the division of vehicles of the state department of revenue a*
0216 *record of the fact that a defendant did or did not fulfill the*
0217 *terms of a diversion agreement required to be filed under*
0218 *subsection (f) of K.S.A. 22-2909 and amendments thereto. Such*
0219 *record shall be made available to any city, county or district*
0220 *attorney or court for use in proceedings conducted under K.S.A.*
0221 ~~8-285 or 8-1567 and amendments to these sections or any alcohol~~
0222 ~~related offense as defined in K.S.A. 12-4413.~~

0223 Sec. 6. K.S.A. 12-4412, 12-4416 and 12-4418 and K.S.A. 1984
0224 Supp. 22-2909 and 22-2911 are hereby repealed.

0225 Sec. 7. This act shall take effect and be in force from and
0226 after its publication in the statute book.

SESSION OF 1985

SUPPLEMENTAL NOTE ON SENATE BILL NO. 204

**As Recommended by Senate Committee on
Judiciary**

Brief of Bill*

S.B. 204 amends statutes relating to diversion agreements. The bill requires copies of diversion agreements entered into in lieu of further proceedings on a driving under the influence of alcohol or drugs (DUI) charge shall be filed with the Division of Vehicles of the Department of Revenue at the time the agreement is filed with the court. In addition, notice must be sent to the Division of Vehicles of whether the defendant fulfilled the terms of the diversion agreement. Under current law these agreements are filed with the Division of Vehicles after the diversion program is completed.

Background

The bill was introduced by members of the Sedgwick County legislative delegation at the request of the Association of Rural Mayors of Sedgwick County. A proponent of the bill said the filing of DUI diversion agreements sooner will provide more timely information for local prosecutors who may be considering a defendant for diversion on a DUI charge because they are not aware of a previous diversion agreement.

* Bill briefs are prepared by the Legislative Research Department and do not express legislative intent.

LAW OFFICES OF
HAGEN, BATES & SUELTER

ARTHUR P. HAGEN
ROBERT L. BATES
ROBERT G. SUELTER

2018 FOREST AVE., P.O. BOX 2026
GREAT BEND, KANSAS 67530-2026
(316) 792-5271

March 4, 1985

Honorable Jerry Friedeman
Statehouse
Topeka, Kansas 66612

Hassler BY B 2570
- Van Clum HB 2569
TRANS & UTILITIES
2570 9:00 APRIL 8

Dear Mr. Friedeman:

Recently, I had an occasion to call the Kansas Department of Revenue, Division of Vehicles, concerning tickets given in our court. We have repeatedly given tickets for no Kansas drivers license to an individual and reported those tickets to the State of Kansas upon his plea of guilty to the charges. These tickets were for Possessing No Kansas Drivers License While Operating a Motor Vehicle. The person, who did not have a drivers license issued to him, has lived in Kansas for a good part of his life and residing in the Great Bend area for at least the last ten years. A copy of those tickets are enclosed. The Clerk of our court forwarded these tickets to the Department of Revenue, Division of Vehicles for their action. However, when we check a driving record, we find that the individual has no driving record because the violations have not been recorded in to the computer. Although it is a common practice of the Division of Vehicles to create drivers license numbers for unlicensed persons for some violations, apparently that is not the practice in the event of charges of driving without valid Kansas drivers licenses. I was informed by the Division of Vehicles that violations of Speeding, Reckless Driving or Turn violations would cause a drivers license number to be created and a record made. When I asked why the same was not done for operation of a motor vehicle by one not possessing a drivers license, I was told "that's a law enforcement matter". The person I talked to about this attributed that quote to John Smith who apparently heads up this division.

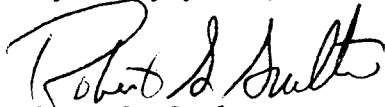
I don't think that is a law enforcement matter. I think it is either an administrative matter or a legislative matter. Apparently it is not an administrative matter so I am making it a legislative matter and am writing this letter to you. We have taken as many steps as we can to impose upon these people the seriousness of the necessity for having an operator's license while driving a vehicle in the State of Kansas. However, they keep right on driving despite our actions. I am also certain they are driving out of the city and in all likelihood are getting tickets there. However, no one knows they are getting the tickets because the Division of Vehicles will not

ATT. (2)
4/10/85

record those tickets in their central computer. The person, therefore, can essentially drive wherever he wants to and whenever he wants to so long as he is willing to pay a fine of \$30.00 to \$35.00, outside the City of Great Bend, for operating his motor vehicle without a Kansas drivers license. Other cities have no way of knowing that we have given him tickets and we have no way of knowing if other cities have given him tickets.

I realize that this appears to be a long letter for a rather small subject. However, this is not a rather small subject. You and I and presumably Mr. Smith all have to get Kansas drivers license before we can operate a vehicle in the State of Kansas. Mr. Ford and several others choose not to. Mr. Smith's whole job is keeping track of violations on those licenses provided you have the license. However, when you don't bother to get a license, you tend to put yourself above the law when you get a ticket for not doing the very thing you are supposed to do - getting a license - and the State of Kansas does not even bother to write it down. It appears to me to be relatively serious and I would request that you take some action legislatively to mandate the Department of Revenue, Division of Vehicles, create a record of distribution on the computer of all persons driving vehicles without Kansas drivers licenses. Thank you for your assistance and cooperation.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Robert G. Suelter".

Robert G. Suelter

RGS:lp

Sec. ____ K.S.A. 12-4509 is hereby amended to read as follows: 12-4509. (a) Whenever an accused person is found guilty of the violation of an ordinance, the municipal judge may:

(1) Release the accused person without imposition of sentence; or

(2) Release the accused person on probation after the imposition of sentence, without imprisonment or the payment of a fine or a portion thereof, subject to conditions imposed by the court; or

(3) Impose such sentence of fine, imprisonment, or both, as may be authorized for the ordinance violation.

(b) Whenever an accused person is found guilty of the violation of an ordinance and there is evidence that the act constituting the violation of the ordinance was substantially related to the possession, use or ingestion of a cereal malt beverage or an alcoholic beverage by such person, the judge may:

(1) Order any of the dispositions authorized by subsection (a); or

(2) Order such person to attend and satisfactorily complete a suitable educational or training program directed to the effects of alcohol or other chemical substances when ingested by humans; or

(3) Any appropriate combination of paragraphs (1) and (2) of this subsection.

(c) When an accused person is found guilty of the violation of an ordinance, and the violation occurred when the violator was operating a motor vehicle without a valid driver's license, a condition imposed by the municipal judge under subpart (2) of subsection (a) may be, or include, a provision that the person's privilege to drive a motor vehicle is suspended for such period of time not exceeding six months for each such violation as the municipal judge specifies. Violation of the provisions of a suspension imposed under this subsection (c) is a class C misdemeanor.

ATT. (3)
4/10/85

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KANSAS DEPARTMENT OF ECONOMIC DEVELOPMENT

Minority Business Division
503 Kansas Avenue, Sixth Floor, Topeka, Kansas 66603
Phone (913) 296-3805



JOHN CARLIN
Governor

CHARLES J. "Jamie" SCHWARTZ
Secretary

COMMITTEE TESTIMONY

TO: Chairman & Members of the Senate Transportation Committee FROM: Billy Q. McCray - Director
Minority Business - KDED

RE: HB2462 - Kansas Highway Contractor Development Act

My name is Billy McCray and on behalf of the Minority Business Division of the Kansas Department of Economic Development, I rise to support HB2462.

This bill is a very brief yet concise measure, which would give the Kansas Department of Transportation authority (at its discretion) to set aside certain construction contracts for disadvantaged businesses.

The Minority Business Division of KDED has historically supported set asides for MBE's and WBE's because statistics, both nationally and here in Kansas, show that these contractors do not receive their fair share of highway contracts awarded.

Up until 1983, only about 1% of construction contracts in KDOT were awarded to women-owned businesses (WBE's) and approximately 3% were awarded to businesses owned by minorities (MBE's). Although some improvement has been made, HB2462 would authorize, by statute, discretionary authority for KDOT personnel to better meet federal Department of Transportation requirements as stated in the 1982 Surface Transportation Assistance Act (STAA).

HB2462 does not go as far as some minority contractors would like, but having served in the Senate for a few years, I understand the legislative process. The art of the possible is often arrived at through compromise, and although I believe a true set aside would best serve WBE's and MBE's, HB2462 is a definite step in the right direction. It allows the state of Kansas, through its Department of Transportation, to meet the goals and objectives of the Surface Transportation Assistance Act (STAA), and at the same time solve the lingering problem of access to the state contract awarding process for those vendors who have been virtually shut out in the past.

The same concept was introduced in the Senate last year. It passed out of the Senate Transportation Committee without a dissenting vote and only had nine (9) no's in the full Senate. The Governor's office was supportive of that bill and also supports HB2462.

Passage of HB2462 would enhance the present effort of KDOT and would certainly make our job more effective.

BQM:bjjo

ATT. (4)
4/10/85

0047 the applicable fine or provide the person with a copy of the fine
0048 schedule established by the municipal judge in accordance with
0049 K.S.A. 12-4305 and amendments thereto.

0050 (c) This section shall be a part of and supplemental to the
0051 provisions of article 42 of chapter 12 of the Kansas Statutes
0052 Annotated and acts amendatory thereof or supplemental thereto.

0053 Sec. 2. K.S.A. 1984 Supp. 8-2110 is hereby amended to read
0054 as follows: 8-2110. (a) Failure to comply with a traffic citation
0055 means failure either to (1) appear at *before any district or*
0056 *municipal* court in response to a traffic citation and pay in full
0057 any fine and court costs imposed or (2) otherwise comply with a
0058 traffic citation as provided in K.S.A. 1984 Supp. 8-2118 *and*
0059 *amendments thereto*. Failure to comply with a traffic citation is a
0060 misdemeanor, regardless of the disposition of the charge for
0061 which such citation was originally issued.

0062 (b) In addition to penalties of law applicable under subsec-
0063 tion (a), when a person fails to comply with a traffic citation,
0064 except for illegal parking, standing or stopping, the *district or*
0065 *municipal* court in which the person should have complied with
0066 the citation shall ~~inform the division of vehicles of the failure to~~
0067 ~~comply~~. Upon receipt of a report of a failure to comply with a
0068 traffic citation under this subsection, pursuant to K.S.A. 8-255,
0069 and amendments thereto, the division of vehicles shall notify the
0070 violator and suspend the license of the violator until satisfactory
0071 evidence of compliance with the terms of the traffic citation has
0072 been furnished the informing court. Upon such compliance the
0073 informing court shall notify the division of vehicles and the
0074 ~~suspension or suspension action shall be terminated.~~

0075 Sec. 3. K.S.A. 1984 Supp. 12-4212 is hereby amended to read
0076 as follows: 12-4212. (a) *Except as provided in subsection (b)*, a
0077 law enforcement officer may arrest a person under any of the
0078 following circumstances:

- 0079 (1) The officer has a warrant commanding that the person be
0080 arrested.
- 0081 (2) A warrant for the person's arrest has been issued by a
0082 municipal court in this state.
- 0083 (3) The officer has probable cause to believe that the person

mail notice to the person that if the person does not appear in court or pay all fines, court costs and any penalties within thirty (30) days, the Division of Vehicles will be notified to suspend the person's driving privileges.

(c) Whenever a person's driving privileges have been suspended pursuant to subparagraph (b), the court shall assess a reinstatement fee of \$25.00 for each charge on which the person failed to satisfy regardless of the disposition of the charge for which such citation was originally issued. Such reinstatement fee shall be in addition to any fine, court costs and other penalties. The court shall, at least monthly remit all reinstatement fees to the department of revenue which shall deposit such fees with the state treasurer who shall credit such moneys to the motor vehicle operating fund.

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HOUSE BILL No. 2562

By Committee on Ways and Means

2-27

0018 AN ACT concerning municipalities; relating to the granting of
0019 franchises; amending K.S.A. 12-824 and 12-2001 and repeal-
0020 ing the existing ~~section~~ sections.

0021 *Be it enacted by the Legislature of the State of Kansas:*

0022 Section 1. K.S.A. 12-824 is hereby amended to read as fol-
0023 lows: 12-824. (a) All incorporated cities in the state of Kansas into
0024 or through which any interurban railroad may have ~~heretofore~~
0025 been built, or into or through which any interurban railroad may
0026 propose to build a line of interurban railroad, or into or through
0027 which any corporation operating a system for the transmission of
0028 electric current between two or more incorporated cities in the
0029 state shall have ~~heretofore been~~ built, or into or through which
0030 any such corporation may propose to build its transmission lines,
0031 are hereby authorized and empowered upon such terms and
0032 conditions, as any such city may by ordinance prescribe, to grant
0033 franchises to such interurban railroad companies and transmis-
0034 sion corporations for any public utility purposes for which they
0035 are or hereafter may be incorporated. *Any such franchise shall*
0036 *be granted for a period not greater than the time for which the*
0037 *charter under which said such company or corporation is then*
0038 *operating shall continue continues to run but in no case to*
0039 *exceed 35 years. Provided, That. Such franchise shall not be*
0040 *granted until notice of the proposition to grant the same has been*
0041 *given for twenty 20 days by publication in some newspaper in*
0042 *general circulation in such city; and. If within said twenty days*
0043 ~~10 percent~~ *such twenty-day period, 10% of the legal qualified*
0044 *electors petition such city authorities to submit the same to a*
0045 *vote of the electors of the city, such city authorities shall submit*

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0046 said *the franchise proposition to a vote of the people before such*
 0047 *franchise be granted and be governed by result of such vote:*
 0048 *Provided, That is granted. No such election shall be held until a*
 0049 *certificate shall be is procured from the corporation commission*
 0050 *of the state of Kansas, or from the state regulatory body at the*
 0051 *time exercising control over common carriers and public utili-*
 0052 *ties, that of public necessity and convenience requires the con-*
 0053 *struction of such improvements or the furnishing of such public*
 0054 *services: Provided, That. Nothing in this act shall be construed*
 0055 *as applying to telephone and telegraph companies.*

[that

0056 (b) *Any provision for compensation or consideration, in-*
 0057 *cluded in a franchise granted pursuant to this section which is*
 0058 *established on the basis of compensation or consideration paid*
 0059 *by an interurban railroad company or transmission corporation*
 0060 *under another franchise, is hereby declared to be contrary to the*
 0061 *public policy of this state and shall be void and unenforceable.*

[On and and after the effective date of this act,

0062 **Section 1 Sec. 2.** K.S.A. 12-2001 is hereby amended to read
 0063 as follows: 12-2001. (a) The governing body of any city may
 0064 permit any person, firm or corporation to:

Any such provision, included in a franchise granted pursuant to this section and in force on the effective date of this act which requires payments to the city by an interurban railroad company or transmission corporation to increase by virtue of the compensation or consideration required to be paid under a franchise granted by another city to the company's or corporation's predecessor in interest, is hereby declared to be contrary to the public policy of this state and shall be void and unenforceable.

0065 (1) Manufacture, sell and furnish artificial or natural gas light
 0066 and heat; electric light, water, power or heat; or steam heat to the
 0067 inhabitants;

0068 (2) build street railways, to be operated over and along or
 0069 under the streets and public grounds of such city;

0070 (3) construct and operate telegraph and telephone lines;

0071 (4) lay pipes, conduits, cables and all appliances necessary
 0072 for the construction, operation of gas and electric-light or steam-
 0073 heat plants;

0074 (5) lay pipes, conduits, cables and all appliances necessary
 0075 for the construction and operation of electric railways or bus
 0076 companies;

0077 (6) lay pipes for the operation of a water plant for the dis-
 0078 tribution or furnishing of water over, under and along the streets
 0079 and alleys of such city; or

0080 (7) use the streets in the carrying on of any business which is
 0081 not prohibited by law.

0082 (b) If the governing body of a city permits any activity speci-

0083 fied in subsection (a), the granting of permission to engage in the
0084 activity shall be subject to the following:

0085 (1) All contracts granting or giving any such original fran-
0086 chise, right or privilege, or extending or renewing or amending
0087 any existing grant, right, privilege or franchise, to engage in such
0088 an activity shall be made by ordinance, and not otherwise.

0089 (2) No contract, grant, right, privilege or franchise to engage
0090 in such an activity, now existing *or* hereafter granted, shall be
0091 extended for any longer period of time than 20 years from the
0092 date of such grant or extension.

0093 (3) No person, firm or corporation shall ~~ever~~ be granted any
0094 exclusive franchise, right or privilege whatever.

0095 (4) The governing body of any city, at all times during the
0096 existence of any contract, grant, privilege or franchise to engage
0097 in such an activity, shall have the right by ordinance to fix a
0098 reasonable schedule of maximum rates to be charged such city
0099 and the inhabitants thereof for gas, light and heat, electric light,
0100 power or heat, steam heat or water; the rates of fare on any street
0101 railway or bus company; the rates of any telephone company; or
0102 the rates charged any such city, or the inhabitants thereof, by any
0103 person, firm or corporation operating under any other franchise
0104 under this act. The governing body ~~shall~~ at no time *shall* fix a rate
0105 which prohibits such person, firm or corporation from earning a
0106 reasonable rate upon the fair value of the property used and
0107 useful in such public service. In fixing and establishing such fair
0108 value, the value of such franchise, contract and privilege given
0109 and granted by the city to such person, firm or corporation shall
0110 not be taken into consideration in ascertaining the reasonable-
0111 ness of the rates to be charged to the inhabitants of such city.

0112 (5) No such grant, right, privilege or franchise shall ~~ever~~ be
0113 made to any person, firm, corporation or association unless it
0114 provides for adequate compensation or consideration therefor to
0115 be paid to such city, and regardless of whether or not other or
0116 additional compensation is provided for such grantee shall pay
0117 annually such fixed charge as may be prescribed in the franchise
0118 ordinance. Such fixed charge may consist of a percentage of the
0119 gross receipts derived from the service permitted by the grant,

0120 right, privilege or franchise from consumers or recipients of such
 0121 service located within the corporate boundaries of such city, and,
 0122 in case of public utilities or common carriers situated and
 0123 operated wholly or principally within such city, or principally
 0124 operated for the benefit of such city or its people, from con-
 0125 sumers or recipients located in territory immediately adjoining
 0126 such city and not within the boundaries of any other incor-
 0127 porated city; and in such case such city shall make and report to
 0128 the governing body all such gross receipts once each month, or at
 0129 such other intervals as stipulated in the franchise ordinance and
 0130 pay into the treasury the amount due such city at the time the
 0131 report is made. The governing body shall also have access to and
 0132 the right to examine, at all reasonable times, all books, receipts,
 0133 files, records and documents of any such grantee necessary to
 0134 verify the correctness of such statement and to correct the same,
 0135 if found to be erroneous. If such statement of gross receipts ~~be is~~
 0136 incorrect, then such payment shall be made upon such corrected
 0137 statement.

0138 *Any provision for compensation or consideration, included in*
 0139 *a franchise granted to a utility which is established on the basis*
 0140 *of compensation or consideration paid by the utility under*
 0141 *another franchise, is hereby declared to be contrary to the*
 0142 *public policy of this state and shall be void and unenforceable.*

0143 (6) No such right, privilege or franchise shall ever be granted
 0144 until the ordinance granting the same has been read in full at
 0145 three regular meetings of the governing body. Immediately after
 0146 the final passage, the ordinance shall be published in the official
 0147 city paper once a week for two consecutive weeks. Such ordi-
 0148 nance shall not take effect and be in force until after the expira-
 0149 tion of 60 days from the date of its final passage. If, pending the
 0150 passage of any such ordinance or during the time between its
 0151 final passage and the expiration of 60 days before such ordinance
 0152 takes effect, 20% of the qualified voters of such city voting for
 0153 mayor, or in case no mayor is elected then the commissioner or
 0154 council member receiving the highest number of votes, at the
 0155 last preceding city election present a petition to the governing
 0156 body asking that the franchise ordinance be submitted for adop-

On and after the effective date of this act,

Any such provision, included in a franchise granted to a utility and in force on the effective date of this act which requires payments to the city by a utility to increase by virtue of the compensation or consideration required to be paid under a franchise granted by another city to the utility's predecessor in interest, is hereby declared to be contrary to the public policy of this state and shall be void and unenforceable.

0157 tion to popular vote, the mayor of the city shall issue a procla-
0158 mation calling a special election for that purpose. The procla-
0159 mation calling such special election shall specifically state that
0160 such election is called for the adoption of the ordinance granting
0161 such franchise, and the ordinance shall be set out in full in the
0162 proclamation. The proclamation shall be published once each
0163 week for two consecutive weeks in the official city newspaper,
0164 and the last publication shall not be less than 30 days before the
0165 day upon which the special election is held. If, at the special
0166 election, the majority of votes cast shall be for the ordinance and
0167 the making of the grant, the ordinance shall thereupon become
0168 effective. If a majority of the votes cast at the special election are
0169 against the ordinance and the making of the grant, the ordinance
0170 shall not confer any rights, powers or privileges of any kind
0171 whatsoever upon the applicants therefor and shall be void.

0172 All expense of publishing any ordinance adopted pursuant to
0173 this section shall be paid by the proposed grantee. If a sufficient
0174 petition is filed and an election is called for the adoption of any
0175 such ordinance, the applicants for the grant, right, privilege or
0176 franchise, upon receipt by the applicants of written notice that
0177 such petition has been filed and found sufficient and stating the
0178 amount necessary for the purpose, shall immediately deposit
0179 with the city treasurer in cash an amount sufficient to cover the
0180 entire expense of such election. The mayor shall not issue a
0181 proclamation calling such election until such money is deposited
0182 with the treasurer. Upon such failure to so deposit such money
0183 the ordinance shall be void.

0184 (7) All contracts, grants, rights, privileges or franchises for the
0185 use of the streets and alleys of such city, not herein mentioned,
0186 shall be governed by all the provisions of this act, and all
0187 amendments, extensions or enlargements of any contract, right,
0188 privilege or franchise previously granted to any person, firm or
0189 corporation for the use of the streets and alleys of such city shall
0190 be subject to all the conditions provided for in this act for the
0191 making of original grants and franchises. The provisions of this
0192 section shall not apply to railway companies for the purpose of
0193 reaching and affording railway connections and switch privi-

0194 leges to the owners or users of any industrial plants, or for the
0195 purpose of reaching and affording railway connections and
0196 switch privileges to any agency or institution of the state of
0197 Kansas.

0198 Sec. ~~2~~ 3. K.S.A. ~~12-2001~~ is 12-824 and 12-2001 are hereby
0199 repealed.

0200 Sec. ~~3~~ 4. This act shall take effect and be in force from and
0201 after its publication in the statute book.