

Approved March 4, 1988
Date

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY

The meeting was called to order by Representative Robert S. Wunsch at
Chairperson

11:00 a.m. ~~p.m.~~ on February 26, 1988 in room 313-S of the Capitol.

All members were present except:

Representatives Bideau, Peterson, Shriver and Vancrum, who were excused.

Committee staff present:

Jerry Donaldson, Legislative Research Department
Jill Wolters, Revisor of Statutes Office
Mary Jane Holt, Committee Secretary

Conferees appearing before the committee:

Dan Rice, Legal Counsel, Secretary of State's Office
Ron Smith, Kansas Bar Association
Doug Moshier, City Attorney, Wichita

Hearing on H.B. 3018 - Concerning corporations, relating to cumulative voting.

Dan Rice testified H.B. 3018 would remove the provision requiring mandatory cumulative voting for directors from the Kansas Corporation Code. Cumulative voting for directors is a method of voting that allows minority shareholders to insure representation on the board of directors. This change would be consistent with the current Delaware Code. He said the Secretary of State has no position on this bill, (see Attachment I).

The hearing was concluded on H.B. 3018 subject to receiving written testimony from W. Robert Alderson, Jr., a Topeka attorney.

Hearing on H.B. 3021 - Act amending the corporation code

Dan Rice testified H.B. 3021 makes a number of technical changes to the General Corporation Code. Since 1972 numerous changes have been made to many provisions of the Delaware Code. This bill would make the same amendments to the Kansas code. He said the Secretary of State strongly supports this bill because of the benefits it provides corporations in the state, (see Attachment II).

Ron Smith stated the Kansas Bar Association's Corporate Law Section strongly supports this bill.

The hearing was closed on H.B. 3021.

Hearing on H.B. 2669 - Concerning cities, relating to the acquisition of fee title to certain realty.

Doug Moshier testified H.B. 2669 would permit cities to condemn, purchase or receive by way of dedication or gift fee simple title to property in which the city intends to acquire a permanent easement. The city of Wichita strongly supports the enactment of H.B. 2669, (see Attachment III).

The hearing was closed on H.B. 2669.

Hearing on H.B. 3052 - Concerning collateral source

Representative Wunsch explained this bill could be considered a trailer bill to the collateral source bill that was passed. This bill designates a \$50,000 threshold.

The hearing was closed on H.B. 3052.

Representative Fuller moved to raise the \$50,000 sum on line 24 to \$100,000. The motion was seconded. The motion passed.

The Committee meeting was adjourned at 11:45 a.m.

Bill Graves
Secretary of State



2nd Floor, State Capitol
Topeka, KS 66612-1594
(913) 296-2236

STATE OF KANSAS

TESTIMONY BEFORE THE HOUSE JUDICIARY COMMITTEE
ON HB 3018

February 26, 1988

By: Danton B. Rice - Legal Counsel
Deputy Assistant Secretary of State

House bill 3018 would remove the provision requiring mandatory cumulative voting for directors from the Kansas Corporation Code. Cumulative voting for directors is a method of voting that allows minority shareholders to insure representation on the board of directors.

An example of cumulative voting would be a corporation with 2 shareholders, A with 10 shares, and B with 20 shares. Further, assume that there are three directors positions and that the three candidates with the most votes in the election win the seats. If cumulative voting is required, the total number of votes that each shareholder may cast is equal to the number of shares owned multiplied by the number of positions available. In this example A will have 30 votes to cast and B will have 60 votes to cast. If A casts all 30 votes for one candidate they can assure representation on the board.

Currently 18 states require mandatory cumulative voting for directors. However, the voters of the state of Missouri will be considering a constitutional amendment to remove the provision from the Missouri General Corporation Code. Additionally, this change would be consistent with the current Delaware Code.

The Secretary of State has no position on HB 3018.

Attachment I

Bill Graves
Secretary of State



2nd Floor, State Capitol
Topeka, KS 66612-1594
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STATE OF KANSAS

TESTIMONY BEFORE THE HOUSE JUDICIARY COMMITTEE
ON HB 3021

February 26, 1988

BY: Danton B. Rice - Legal Counsel
Deputy Assistant Secretary of State

House bill 3021 would make a number of technical changes to the General Corporation Code. In 1972 Kansas adopted the current corporation code which was modeled extensively upon the then existing Delaware law. Since 1972 numerous changes have been made to many provisions of the Delaware code. This bill would make the same amendments to the Kansas code.

The advantage of adopting the majority of the Delaware Corporate Code is the vast number of reported decisions interpreting it. This will improve corporate decision making and should encourage more businesses to incorporate in Kansas.

The bill was drafted with the help of, and has the full support of, Professors Lovitch and Hecker of the University of Kansas School of Law and the Wichita Bar Association Legislation Subcommittee on the Corporate Code. In addition, the Secretary of State strongly supports the bill because of the benefits it provides corporations in the state.

Attachment II



DEPARTMENT OF LAW
OFFICE OF CITY ATTORNEY
CITY HALL — THIRTEENTH FLOOR
455 NORTH MAIN STREET
WICHITA, KANSAS 67202 - 1635
(316) 268-4681

February 25, 1988

The Honorable Robert S. Wunsch, Chairman
House Judiciary Committee
State Capitol Building
Topeka, Kansas 66612

Re: House Bill No. 2669

Ladies and Gentlemen:

Your Committee has pending before it House Bill No. 2669. This Bill, if passed, would amend K.S.A. 1987 Supp. 12-16,103 to permit cities to condemn, purchase or receive by way of dedication or gift fee simple title to property in which the City intends to acquire a permanent easement. The statute as presently drafted permits a city to acquire the underlying fee title to property in which it already holds a permanent easement. This can be accomplished by condemnation, purchase, dedication or gift. The statute does not presently permit a city to acquire fee title "up front" at the time the permanent easement is acquired.

The City of Wichita supports House Bill 2669 and the proposed amendment to K.S.A. 1987 Supp. 12-16,103. The basis for this support is in the net savings the City believes it will realize in its property management function in future years. As the law exists today, the City can only acquire a permanent easement for necessary street, drainage or flood control right-of-way. It cannot acquire fee simple title in right-of-way necessary for those public purposes. In reality, however, if the City resorts to condemnation to acquire such permanent easements, it ends up paying for them as if it were acquiring fee simple title. This is because the courts are unable, when the duration of the City's need for such easements is indeterminable, to assign any economic value to the reversionary rights of the property owner from whom the permanent easement is taken. Such a result is probably as fair as the courts can be to both the City and the property owner in these circumstances.

Attachment III

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However, unfairness enters the picture when the City decides that it no longer needs the easement for the purpose for which it was acquired. Because of the reversionary interest of the property owner from whom the easement was acquired, the City has nothing to sell or dispose of at this point because its interest disappears by operation of law and reverts to the holder of the reversionary interest who then has reacquired fee title. More often than not, this amounts to a windfall for the holder of the reversionary interest. Such interest holder has either already received full payment from the City for the land or is a successor in title who is probably unaware that he holds any reversionary interest and certainly has never paid any additional consideration to acquire such an interest.

For the City to recoup any of its acquisition costs for these easements, it must have the ability to sell the property when it no longer needs it for a public purpose. To do so, it must be able to pass fee simple title. At present, to merge the underlying fee and the City's easement interest, the City must negotiate with the owner of the reversionary interest. This results, in almost all cases, in the City having to expend additional money to acquire fee simple title, both through additional monies paid to the reversionary owner and the administrative costs and expenses for a second condemnation proceeding. Under the provisions of House Bill 2669, the City would have the option of deciding, at the time of acquisition, whether it wished to acquire fee simple title. It is important to note that the City would still be constrained by the requirement that it could only acquire lands necessary for a stated public purpose. House Bill 2669 does not expand the scope of a city's power of eminent domain but merely the nature of the title that a city can acquire when it exercises that power.


The benefits of this change in the law may very well not be felt by cities in the near future. However, in the long run cities will, because of this change, be in a position to release surplus land into the marketplace where not only the city will benefit by being able to recoup some portion of its acquisition costs, but the public will be served by having this surplus land made available to the greatest number of prospective developers.

In summary, the City of Wichita strongly supports the enactment of House Bill 2669. The Bill represents an opportunity for cities to better manage the acquisition, use and disposition of public lands. The provisions of the Bill do not encroach at all

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on the rights of private property owners who remain entitled to just compensation for the city's acquisition of interest in their real property.

Very truly yours,


Thomas R. Powell
Director of Law

TRP:cdh