Approved April 8, 1988
Date

MINUTES OF THE Senate COMMITTEE ON Local Government.

The meeting was called to order by Senator Don Montgomery at
Chairperson

9:00 a.m./~~p.m.~~ on March 24, 1988 in room 531-N of the Capitol.

All members were present except:

Committee staff present: Mike Heim, Theresa Kiernan and Lila McClaflin

Conferees appearing before the committee:
Representative Debara Schauf
Jim Kaup, the League of Kansas Municipalities
Ernie Mosher, the League of Kansas Municipalities
Dick Pankratz, State Historical Society

The Chairman opened the hearing on H.B. 2726, relating to publication of notices of municipal bond sales. He called on Representative Schauf.

Representative Schauf stated she was a co-sponsor of the bill; H.B. 2726 would amend the statute dealing with published notices of the sales of municipal bonds, it would delete the requirement for publication in a newspaper published in Topeka, Ks. The sponsors of the bill do not think publication of bond sale notices in the Topeka Capital-Journal were necessary, since the publication was required in a local paper and in the Kansas Register.

Jim Kaup, the League of Kansas Municipalities, stated they had worked with Staff to draw up the proposed amendments (Attachment I).

Senator Allen moved to adopt the proposed amendment and to conceptually amend the maximum rate of interest which may be fixed on bonds. Senator Daniels seconded the motion. Motion carried.

Senator Allen moved H.B. 2726 be passed as amended. Senator Daniels seconded the motion. Motion carried.

Senator Salisbury asked to be recorded as voting "no". She opposed deleting the language "which is printed and published in Topeka, Kansas".

The Chairman referred to H.B. 2667 and H.B. 2670., he called on Ernie Mosher.

Ernie Mosher, the League of Kansas Municipalities, distributed a hand-out outlining the key provisions included in the act. He stated the passage of legislation to improve and make more workable the existing MID and TIF Acts was a convention adopted policy objective of the Leagues and is apart of the League's 1988 legislative program (Attachment II).

Mr. Mosher responded to questions concerning the proposed legislation. The committee was of the opinion that the legislation had safe guards built in, with the notices required and the public hearings and the "required 2/3 vote of the city governing body".

Written testimony received from Brenda M. Manske, Executive Director, Southeast Kansas Tourism Region, Inc., supporting both bills was distributed (Attachment III).

Senator Daniels moved H.B. 2670 be passed. Senator Salisbury seconded the motion. Motion carried.

CONTINUATION SHEET

MINUTES OF THE Senate COMMITTEE ON Local Government,

room 531-N Statehouse, at 9:00 a.m./~~p.m.~~ on March 24, 19__.

Senator Daniels moved H.B. 2670 be passed. Senator Salisbury seconded the motion. Motion carried.

The hearing on H.B. 2698 relating to cities of the second and third classes; concerning appointment and term of certain officers. The Chairman called on Jim Kaup.

Jim Kaup stated the bill was introduced at the request of the League. They believe it is clearly in the public interest for their cities elective officers to be able to appoint people to office for periods of less than a one-year term of office (Attachment IV).

Several senators expressed concern with the legislation. The bill was tabled.

The hearing on H.B. 2699 relating to historic preservation and the protection of historic property was opened. The Chairman called on Jim Kaup to testify.

Jim Kaup presented written testimony supporting the bill. His testimony gives the background of why this legislation was requested; they believe this bill provides a simple, workable remedy to the problem by amending KSA 75-2716 to provide a definition for the term "environs" that is precise enough to let a unit of local government know when a project or activity it is about to undertake involves the "environs" or "historic property", thereby triggering the duty to notify the Historicial Society (Attachment V).

Dick Pankratz, State Historical Society, stated they support H.B. 2699, they agree with the League and they approve of the bill as amended by the House Committee.

Senator Winter moved H.B. 2699 be passed. Senator Steineger seconded the motion. Motion carried.

The agenda for the next meeting, March 25, 1988, was announced. The Chairman adjourned the meeting at 10:04 a.m.

Don Montgomery

Chairman, Senator Don Montgomery

Date: March 24, 1988

GUEST REGISTER

SENATE

LOCAL GOVERNMENT

NAME	ORGANIZATION	ADDRESS
Richard Pankratz	Kansas State Historical Society	120 W. 10th, Topeka
MAC MANNING	City of Valley Center	1165. PARK, Valley Center 67147
Jim Kaup	League of Municipalities	Topeka
E.A. Mosher	" " "	"

Proposed Amendment to House Bill No. 2726
(As Amended by House Committee)

On page 3, following line 85, by inserting the following:

"Sec. 2. K.S.A. 1987 Supp. 10-1009 is hereby amended to read as follows: 10-1009. The maximum stated rate of interest which may be fixed on bonds issued by a municipality or taxing subdivision of the state of Kansas shall be determined on the day the bonds are sold with respect to fixed rate bonds or the date on which the interest rate is determined in accordance with the resolution or ordinance of the issuer with respect to variable rate bonds and shall not exceed the index of treasury bonds published by the weekly Credit Markets, in New York, New York, on the Monday next preceding ~~the day on which the bonds are sold~~ such date, plus 2%.

The maximum rate of interest specified in this section shall be applicable to bonds issued after the effective date of this act pursuant to proceedings initiated either before or after the effective date of this act.";

By renumbering sections 2 and 3 as sections 3 and 4;

Also on page 3, in line 86, by striking "is" and inserting "and 10-1009 are";

In the title, in line 18, by striking all following "to"; in line 19, by striking "sales" and inserting "municipalities; concerning the issuance of bonds"; also in line 19, following "10-106", by inserting "and 10-1009"; in line 20, by striking "section" and inserting "sections";

HB 2667 and HB 2670--MID, TIF COMMUNITY DEVELOPMENT BILLS

MID stand for the self-supported Municipal Improvement District Act, set forth in K.S.A. 12-1794 et seq. HB 2667 revises the MID Act.

TIF stands for the Tax Increment Financing Act, found in K.S.A. Supp. 12-1770 et seq. HB 2670 revises the TIF Act.

Both bills have passed the House and are in the Senate Committee on Local Government. Passage of legislation to improve and make more workable the existing MID and TIF Acts is a convention-adopted policy objective of the League (PS I-7) and is part of the League's 1988 legislative program.

If enacted, these bills would provide cities with some new and workable tools for redevelopment, particularly in downtown areas.

HB 2667--MID BILL

The present Municipal Improvement District Act, enacted in 1981, has never been used in Kansas, in part because of its questionable constitutionality. The act authorizes a city to establish an improvement district within its central business district and to levy taxes on property within the district for various improvements. It also authorizes a city to issue bonds for public improvements and for revenue producing improvements within the district. The revenue to finance expenditures within the municipal improvements district would be levied as property taxes. Thus, the MID approach is different than the BID Act--the Business Improvement District Act found at K.S.A. 12-1781 et seq. The charges made by the city in a BID are on the business, not on property. The existing law sets forth a lengthy procedure for forming an MID, and permits 40% of the property owners in the proposed district to veto its formation.

HB 2667 makes a number of procedural changes for establishing a municipal improvement district. However, the principal changes are as follows: (1) Specifies that the district may be used to provide services, such as for sanitation, security, maintenance of public facilities, and any other service which the city may perform and does not perform to the same extent on a city-wide basies. (2) The improvement district would be established as a separate governmental agency, as a body corporate and politic, with the governing body of the city constituting the governing body of the district. The taxes levied on property within the district would be levied by the district governing body. (3) It shifts the public hearing process from the planning commission to the city governing body. (4) It requires a public hearing, after the district is created, before any service or improvement may be undertaken. The bill would not take effect until January 1, 1989.

From the standpoint of the property owner, some key provisions include:

(1) The maximum tax rate on the district must be specified (line 110,138)
(2) By petition of 40% of the owners of property or 40% of owners of assessed valuation, the formation of the district may be vetoed (line 202).
(3) Any improvement loans issued are subject to the following: (a) payable only from taxes on the district (line 278), and are not general obligation bonds (line 286), (b) are subject to public hearing (line 296), and (c) would be financed from district taxes within the maximum tax rate.
(4) Under Section 7, notice and public hearing is required, after legal formation of the district, before any services are provided, before any improvement is authorized, or before any bonds are issued.

HB 2670--TIF BILL

HB 2670, the TIF bill, is intended to make this 1976 law more workable. To date, it has been used in only two cities--Manhattan and Topeka--although such laws are extensively used as a redevelopment tool by cities in other states, particularly for downtown redevelopment projects.

The basic thrust of the tax increment financing procedure is to authorize cities to acquire land for sale to a private developer; bonds are issued by the city to finance the difference between the cost of acquisition and the sale price to the developer, plus the cost of related public expenditures, such as for public improvements. Under the pure tax increment financing approach, the bonds are retired by the increment in property taxes resulting from the private development. The private property owner continues to pay property taxes, in the same manner as any other property. However, the growth in the amount of property taxes resulting from the improvement, levied by the city, the county and the school district, is set aside to pay the bonds. The existing law permits a city to pledge the credit of the city, as well as the tax increment, subject to a petition for a referendum. Under the existing law, TIF programs are undertaken on a project area basis. The ordinance adopting the redevelopment plan requires a 2/3 vote of the governing body, and the board of education and board of county commissioners may vetoe the proposed programs; these requirements continue under HB 2670.

HB 2670 makes a number of procedural changes. However, the substantive changes, in brief, are these: (1) The district could be located in an area previously found to be a slum or blighted under the urban renewal law, while it may now be located only within an area found blighted or within an enterprise zone. (2) It requires a notice and public hearing prior to the creation of the district. Any changes in the original redevelopment plan, such as the undertaking of new project areas, requires a similar notice and public hearing. (3) The bill essentially permits a redevelopment district approach, rather than a project approach; two or more projects could be undertaken within a district. (4) As a result, the tax increment results from increased taxes on all property within the district, not just within the project area. (5) The present law requires the development to be completed within five years; the bill would set the completion date as 15 years after the establishment of the district. (6) The bill specifies the kinds of public improvements that may be made in the district, using tax increment moneys. (7) Revenue received from the district, including the property tax increment, could be used for related purposes after the bonds and interest have been retired, but within the 15 year period. (8) The amendment act would not take effect until January 1, 1989.

Some key provisions include the following:

(1) Does not take effect until January 1, 1989, after reappraisal (line 577).

(2) Does not provide for the use of local sales tax money to finance TIF bonds (line 317).

(3) Continues provisions for county or school board vetoe of the formation of the district (line 124).

(4) Requires a 2/3 vote of city governing body to adopt the redevelopment plan (line 245) or to acquire any property by condemnation (line 253).

(5) Effectively requires a committed private developer, in a public-private partnership. The money (non-federal) comes from the issuance of bonds financed from the tax increment growth, which results from the new private development.

PRESENTATION

to

SENATE LOCAL GOVERNMENT

COMMITTEE

by

BRENDA M. MANSKE

Secretary and Legislative Chair
Kansas Downtown Development Association

Executive Director
Southeast Kansas Tourism Region, Inc.

March 23, 1988

(Attachment III) Local Go 3/24/88

KANSAS DOWNTOWN DEVELOPMENT ASSOCIATION

P.O. BOX 2836
TOPEKA, KANSAS 66601

KDDA Supports HB 2667 and HB 2670

The Kansas Downtown Development Association (KDDA) joins Greater Downtown Wichita in support of HB 2667 and HB 2670, which respectively propose amendments to the existing Municipal Improvement Districts (MID) Act and to the Redevelopment of Central Business District Act.

HB 2667 amends the existing MID Act to allow municipal improvement districts to promote and to stimulate district development by financing promotional programs through use of an ad valorem tax levy on property within the district. These funds may then be used to retire bonds issued under such districts.

HB 2667 also proposes an amendment that would allow ad valorem tax funds to pay for the following services within the MID: development and promotion of community events; amenities such as benches, shelters and sculptures; transportation, operation of parking facilities; maintenance, security and sanitation. KDDA submits that such services are essential to the growth and vitality of Kansas cities. KDDA supports this method of financing such services.

HB 2670 proposes amendments to the Redevelopment of Central Business District Act (Tax Increment Financing, or TIF) to allow unobligated local sales tax revenues to pay for projects financed through TIF bonds. Such financing is a means of providing public funds for community development and redevelopment in partnership with private

business. KDDA supports this type of public/private partnership as one of the main tenets of the Kansas Main Street Program.

KDDA also submits that HB 2670 will give municipalities greater ability to issue and to retire such bonds for projects that are used primarily to aid commercial or retail development.

Although HB 2667 and HB 2670 were introduced by primarily urban legislators, it is KDDA's position that these amendments provide economic development financing tools that will benefit small cities as well as large cities in Kansas. The existing urban economic climate dictates that larger cities will be able to capitalize sooner than their smaller, rural counterparts on the downtown development opportunities addressed by HB 2667 and HB 2670. The economic edge that the larger cities possess will not, however, prevent cities like Ottawa, Augusta or Valley Center from pursuing the alternative development financing vehicles created in these two amendments, whether potential projects involve development and promotion of a downtown marketing plan or placement of downtown "street furniture" such as benches, pedestrian shelters or artwork.

Your support for HB 2667 and HB 2670 will be appreciated.

League of Kansas Municipalities

PUBLISHERS OF KANSAS GOVERNMENT JOURNAL/112 WEST SEVENTH ST., TOPEKA, KANSAS 66603/AREA 913-354-9565

TO: Chairman Montgomery and Members,
Senate Local Government Committee

FROM: Jim Kaup, General Counsel

RE: **HB 2698; Amending Statutes for Elected and Appointive City Officers**

DATE: March 24, 1988

The purpose of HB 2698 is to clarify two separate questions of municipal law raised by a single Attorney General's opinion issued last August (AGO No. 87-115). The bill was introduced by the House Local Government Committee at the request of the League, and enactment of HB 2698 is supported by the League's convention-adopted Statement of Municipal Policy. The bill passed the House on March 7 by a vote of 120-to-four.

(1) **Powers of Council Presidents.** AGO No. 87-115 opined that K.S.A. 14-308 grants city council presidents the power to appoint city officers in the temporary absence of the mayor. The League believes the AG's broad reading of the statutory powers of council presidents creates an undesirable usurpation of mayoral power for both mayor-council cities of the second class and for mayor-council cities of the third class as the statute for those cities (K.S.A. 15-311) has similar language. It is the mayor who is elected by the voters to serve as the executive officer of the city. Council presidents are councilmembers, elected by their fellow councilmembers to serve in the mayor's place in the event of the mayor's temporary absence, and to become mayor when the mayor's office becomes vacant. The League believes it should fall to the mayor, not someone filling in during the mayor's temporary absence, to appoint city officers. Moreover, it has been the common understanding and practice of cities that only the mayor has the legal power to make appointments.

The League suggested the amendments found at lines 46:48 of Section 2 (for cities of the second class) and at lines 81:83 of Section 4 (for cities of the third class) to resolve this question of the proper authority of council presidents.

The bill language eliminates the potential mayor vs. council disputes that might erupt due to AGO No. 87-115 by providing that when sitting as the acting mayor (i.e., when presiding during the temporary absence of the mayor) the council president has all the power and authority given by law to the mayor except the statutory power to appoint city officers. The League does not foresee any practical problems arising from this language. Even in the event of a prolonged, temporary absence of the mayor appointive positions would be continously filled by either (1) the common-law and statutory rule of "holdover" of incumbant officers until the time their successor is appointed and qualified to hold office, or (2) the implied authority of a governing body to appoint "interim" officers where there is no incumbant officer.

(2) Terms of Office. AGO No. 87-115 also opined that because K.S.A. 14-201 says that city appointive officers are to "hold their offices for a term of one year...", a city's attempt to appoint a police chief to a probationary six-month period was unlawful. This conclusion of the AG was based upon an 1895 Kansas Supreme Court decision. The League disagrees with the AG on this point, as appointment to a term of less than one year would not constitute a "conflict" between local law and state law under accepted tests of Home Rule as applied by the Supreme Court. In short, while the Attorney General may have correctly stated the law as it was before Home Rule was adopted by the voters in 1961, his position in AGO No. 87-115 is at odds with Article 12, Section 5 of the Kansas Constitution--the Home Rule Amendment.

While the League strongly disagrees with the Attorney General's conclusion on this point, and while the affected statutes are all subject to city exemption by passage of Home Rule Charter Ordinances, we feel the issue has been clouded enough to warrant clarification by the Legislature of the relevant statutes for second-class cities (K.S.A. 14-201) and third-class cities (K.S.A. 1987 Supp. 15-204).

The amendments found in HB 2698 at line 31 (second-class cities) and line 70 (third-class cities) simply provide that the term of office an appointive officer can be appointed to cannot exceed one year. Regardless of the actual term of an appointment, the rule of incumbants' "holding over" until their successor is appointed and confirmed would continue to apply.

We believe it is clearly in the public's interest for their city elective officers to be able to appoint people to office for periods of less than a one-year term of office. A great many Kansas cities are not blessed with an abundance of candidates for appointive office. Often those positions are filled only as a result of recruitment by the city. When faced with an "unknown quantity" as a prospective public officer, some cities prefer the flexibility of appointing someone on a trail or probationary basis. It seems unusual to mandate by law that the citizens of a city be "locked into" an incompetent or otherwise undesirable officer because of such a literal reading of these statutes.

The balance of the amendments, striking references to city engineers (lines 35:38 and 67:69) and changing councilman to councilmember (lines 57 and 59), are offered as clean-up.

The League respectfully requests this Committee's favorable action on HB 2698.

League of Kansas Municipalities

PUBLISHERS OF KANSAS GOVERNMENT JOURNAL/112 WEST SEVENTH ST., TOPEKA, KANSAS 66603/AREA 913-354-9565

TO: Chairman Montgomery and Members,
Senate Local Government Committee

FROM: Jim Kaup, General Counsel

RE: **HB 2699; Amending the Historic Preservation Act to Define "Environs"**

DATE: March 24, 1988

HB 2699 is intended to provide some physical limitation upon the statutory phrase "environs of (historic) property" as used in the Historic Preservation Act. The bill was introduced by the House Local Government Committee at the request of the League, and enactment of HB 2699 is supported by the League's convention-adopted Statement of Municipal Policy. The House passed HB 2699 on March 9 by a 121-to-one vote.

Background. Cities are subject to the Kansas Historic Preservation Act, K.S.A. 75-2701 et seq. That Act requires, at K.S.A. 1987 Supp. 75-2724, that Kansas governmental agencies, including cities, give the state historical preservation officer notice and an opportunity to investigate and comment upon any proposed "project" (activities) which affects any recognized "historic property...or the environs of such property."

K.S.A. 75-2716(c) defines "project" (see lines 39:49 of HB 2699) to include:

"(1) Activities directly undertaken by the state or any political subdivision of the state, or any instrumentality thereof;

(2) Activities undertaken by a person which are supported in whole or in part through grants, subsidies, loans or other forms of financial assistance from the state or any political subdivision of the state, or any instrumentality thereof; and

(3) Activities involving the issuance of a lease, permit, license, certificate or other entitlement for use, to any person by the state or any political subdivision of the state, or any instrumentality thereof."

K.S.A. 75-2716(b) defines "historic property" (see lines 35:38) as: "any building, structure, object, district, area or site that is significant in the history, architecture, archeology or culture of the state of Kansas, its communities or the nation."

In January 1987 the City of Lawrence approved a zoning change for six lots located across the street from the east boundary of the Old West Lawrence Historic District. The City did not contact the preservation officer of the State Historical Society for review of the effects of the zoning change.

Subsequently the Historical Society requested an Attorney General opinion on the question of whether the City of Lawrence had complied with the Act. That opinion (AGO No. 87-114) brought to the League's attention the shortcoming to the Act which creates an unnecessary and expensive burden upon cities, counties and other units of government without serving any constructive purpose.

Issue. AGO 87-114 opined that a rezoning of land, such as that undertaken by the City of Lawrence, was a "project" subject to the Act, and that the rezoning of land that did not adjoin a historic property, but was in the surrounding area, was within the "environs" of the historic property. This conclusion followed from the Attorney General's reliance upon a Webster's Dictionary definition of "environs". Specifically, the Attorney General said "environs" encompassed "the suburbs or districts around about a city or other populated place," and "any adjoining or surrounding region or space."

Such a definition of "environs", taken literally, would mean anytime any "project" (activity) occurs anywhere within a local government's jurisdiction, and there is a historic property anywhere within that jurisdiction, then notice must be given the Historical Society of the proposed action.

This is obviously an absurd situation for governmental units to be placed. Coupling the Act's broad definition of "project" with the Attorney General's definition of "environs" creates a tremendous burden upon local governments and would flood the Historical Society with an enormous volume of notices from just proposed land use-related "projects" alone.

HB 2699, as amended by the House. This bill provides a simple, workable remedy to the problem by amending K.S.A. 75-2716 to provide a definition for the term "environs" that is precise enough to let a unit of local government know when a project or activity it is about to undertake involves the "environs" of "historic property," thereby triggering the duty to notify the Historical Society.

That amendment, which at the House Committee's request was drafted by joint effort of the State Historical Society and the League, amends K.S.A. 1987 Supp. 75-2724. The amendment would provide that any time a project is undertaken within 500 feet of a designated historical property, and that property is within a city's limits, notice must be given to the State Historic Preservation Officer. If the historic property is in an unincorporated portion of the county, any project undertaken within 1000 feet of the property must be preceded by notice to the Preservation Officer. In addition, at the request of Joe Snell of the Historical Society, language is added at lines 75:80 and 84:85 for clarification of the Historical Society's ability to trigger an investigation of a proposed project, regardless of its proximity to an historic property. These amendments would authorize the Historical Society to initiate an investigation regardless of the proximity of the proposed project to the boundaries of an historic property.

Finally, at line 81 of HB 2699, you will note a one-word amendment, from "shall" to "may". This change was made at the request of Joe Snell, without objection from the League.

The League respectfully requests this Committee's favorable action on HB 2699.