

Approved April 2, 1990
Date

MINUTES OF THE SENATE COMMITTEE ON LOCAL GOVERNMENT

The meeting was called to order by Sen. Don Montgomery at
Chairperson

9:00 a.m.~~p.m.~~ on March 26, 1990 in room 531-N of the Capitol.

All members were present except:

Senators Gaines, Frahm, Burke and Steineger

Committee staff present:

Mike Heim, Legislative Research
Emalene Correll, Legislative Research
Theresa Kiernan, Revisor of Statutes
Shirley Higgins, Committee Secretary

Conferees appearing before the committee: None

The meeting began with the continued discussion of HB 2982 concerning the abatement of nuisances. The Chairman began a discussion regarding the 10 day notice on line 31 of page 1. He also raised the question of the use of "restricted mail" on line 35 as to if it should be changed to "registered". Jim Kaup of the League of Municipalities explained that "certified" and "registered" mail was included under "restricted" a few years ago. He added that this statute is used mostly for the abatement of weeds, and requiring a registered mail notice would add cost and time to the process and could be a hindrance to public safety.

Sen. Petty made a motion to report HB 2982 favorable for passage, Sen. Lee seconded.

Sen. Daniels began a discussion as to if the 10 day notice would be sufficient time for a hearing in some cities where the governing body may not be meeting in that time period. She knows of some cases where a request for a hearing received no response from the city.

Sen. Allen began a discussion of the process involved with restricted mail. Sen. Daniels noted that restricted mail must be signed for by the person to whom it is addressed which could create a problem in notifying persons of a nuisance. Sen. Daniels also had questions regarding the length of time involved before the vehicle is auctioned. Mr. Kaup said the process takes at least 45 days, and notice of the auction is sent to the owner by certified mail.

The Chairman called for a vote on Sen. Petty's motion, and the motion carried.

The Chairman called attention to HB 3077 relating to planning and zoning in counties. The Chairman briefly explained the objections to Section 3 by Mr. Torbert of the Kansas Association of Counties and referred to a balloon prepared by Mr. Torbert and attached to his memorandum. (See Attachment I). Mr. Torbert explained that striking Section 3 takes out any reference to the home rule statute. After a short discussion with Sen. Thiessen regarding the amendment, Sen. Daniels asked Sen. Thiessen if he prefers the bill without the amendment offered by The Kansas Association of Counties. Sen. Thiessen prefers the bill without the amendment.

Sen. Daniels made a motion to recommend HB 3077 favorable for passage, Sen. Ehrlich seconded, and the motion carried.

The Chairman said this would be the last meeting this session except one more for committee members to have suggestions for possible subjects for an interim study.

The minutes of March 23 were approved. The meeting was adjourned at 9:35 a.m.

Unless specifically noted, the individual remarks recorded herein have not been transcribed verbatim. Individual remarks as reported herein have not been submitted to the individuals appearing before the committee for editing or corrections.



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John T. Torbert

March 26, 1990

MEMORANDUM

To: Senate Local Government Committee

From: John T. Torbert
Executive Director

Subject: HB 3077 (Planning and Zoning)

Attached is a suggested amendment to HB 3077. If this amendment were adopted, HB 3077 would have the following effect:

- 1) A county planning board could be increased in size to 20 members. (This was the only provision in the original legislation.)
- 2) If the board of county commissioners in Montgomery County elected to enact zoning in the unincorporated area of the county, the zoning would not be in effect until it was approved by the voters in the unincorporated area.
- 3) The county home rule statute would not be amended.
- 4) Since this statute requiring a zoning election is non-uniform, the county commission could "charter out" from under its application using home rule authority. If the commission elected to do that, the resolution accomplishing this would have to be published twice and would be subject to statutory petition and referendum requirements. To force an election on an issue, a petition would have to be submitted containing names of electors equal in number to at least 2% of the number of electors who voted in the last general election or, 100 electors- whichever number is greater.

Senate Local Gov't
3-26-90
Attachment I

This legislation, amended in this fashion, accomplishes the purpose of having zoning submitted to the voters of Montgomery County while not amending and weakening the county home rule statute.

In closing, we would ask the committee to consider whether this one county political disagreement is really a matter in which the legislature should be involved. What message do you send to local officials when you say, in effect- "Oh yes, we'll be very supportive of home rule unless of course you do something that somebody doesn't happen to like in which case we'll step in and override a local decision?"

MEJMTZON

[As Amended by House Committee of the Whole]

As Amended by House Committee

Session of 1990

HOUSE BILL No. 3077

By Committee on Appropriations

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11 AN ACT concerning counties; relating to planning and zoning;
12 amending K.S.A. ~~19-2915~~ and repealing the existing section
13 [19-101a, 19-2915 and 19-2920 and repealing the existing
14 sections.]
15

NO CHANGE ON
THIS PAGE

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

17 Section 1. K.S.A. 19-2915 is hereby amended to read as follows:
18 19-2915. The board of county commissioners ~~may~~ by resolution *may*
19 establish a planning board for the county. The board shall consist
20 of not less than five nor more than ~~11~~ *15* 20 members who shall
21 be residents of the county, a majority of whom live outside the
22 corporate limits of any incorporated city in the county. The board
23 of county commissioners shall appoint all members of the planning
24 board. The board of county commissioners shall appoint to the plan-
25 ning board one member of the board of supervisors of a conservation
26 district located within the county who shall be a voting member.
27 The members first appointed shall be appointed for terms of one,
28 two and three years. The terms shall be divided equally or as nearly
29 equally as possible between the members. Thereafter members shall
30 be appointed for terms of three years each. Vacancies shall be filled
31 by appointment for the unexpired term. Members of the board shall
32 serve without compensation for their services.

33 [Sec. 2. K.S.A. 19-2920 is hereby amended to read as follows:
34 19-2920. (a) Before any county creates any zoning district or reg-
35 ulates or restricts the use of buildings or land in the county, the
36 board of county commissioners shall require the planning board to
37 recommend to the board of county commissioners the boundaries
38 of districts and appropriate regulations to be enforced in the dis-
39 tricts. All regulations shall be uniform for each class or kind of
40 buildings or land uses throughout each district, but the regulations
41 in one district may differ from those in other districts. The reg-
42 ulations shall be made in accordance with a land use study and
43 shall give reasonable consideration to the existing character of the

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1 district, its suitability for particular uses, conserving the value of
 2 buildings, existing development and encouraging the most appro-
 3 priate use of land throughout the county. The planning board shall
 4 make and develop tentative recommendations and shall hold one
 5 or more public hearings on the recommendations as determined by
 6 the board of county commissioners. The secretary of the planning
 7 board shall publish a notice of each public hearing in the official
 8 county newspaper. At least 20 days shall elapse between the date
 9 of the publication and the date set for the hearing. The notice shall
 10 fix the time and place for the hearing and shall describe in general
 11 terms the regulations and zoning districts proposed, together with
 12 a brief statement regarding the purpose of the zoning districts. The
 13 hearings may be adjourned from time to time and upon the con-
 14 clusion of the same, the planning board shall prepare and adopt
 15 its recommendations in the form of a proposed zoning resolution
 16 and shall submit the same, together with a record of the hearings
 17 on the recommendations to the board of county commissioners. If
 18 a written protest against the proposed zoning or rezoning of any
 19 land lying within three miles of the city limits of any municipality
 20 having a zoning ordinance is received from the governing body of
 21 the city, the county commissioners shall not adopt the proposed
 22 zoning of the land except by a vote of all members which shall be
 23 recorded in the minutes of the meeting along with a statement of
 24 the reasons for the action.

25 [Upon the receipt of the recommendations of the planning board,
 26 the board of county commissioners may adopt the same with or
 27 without change or refer it back to the planning board for further
 28 consideration. After adoption of regulations by the board of county
 29 commissioners, it may from time to time thereafter amend, sup-
 30 plement or change the boundaries or regulations contained in the
 31 zoning resolution.

32 [The procedure for the extension of the application of any zoning
 33 regulations to any additional township, or the area lying adjacent
 34 to any city or impoundment of water shall be the same as that for
 35 the adoption of the original zoning resolution. A proposal for an
 36 amendment or change in zoning may be initiated by the board of
 37 the county commissioners, the planning board or upon application
 38 of the owner of property affected. The board of county commis-
 39 sioners may establish a scale of reasonable fees to be paid in ad-
 40 vance to the secretary of the planning board by the owner of any
 41 property at the time of making application for a change in zoning
 42 of the same. All proposed changes shall first be submitted to the
 43 planning board for recommendation and report, and no amendment

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1 or change shall be made without a hearing before the planning
 2 board. Public notice of the hearing shall be given and the procedure
 3 for the consideration and adoption of the amendment or change
 4 shall be in the same manner required for the consideration and
 5 adoption of the original zoning resolution. In addition to the pub-
 6 lication notice, if the proposed amendment is not a general revision
 7 of an existing zoning resolution and will affect specific property,
 8 such property shall be designated by legal description and written
 9 notice shall be mailed to all owners of property, whether within
 10 or without the county, which is located within 1,000 feet of the
 11 area affected. Failure to receive the notice shall not invalidate any
 12 subsequent action taken. If the amendment affects the boundaries
 13 of any zoning district and the county has made provision for the
 14 fixing of the same upon an official map which has been incorporated
 15 by reference, the amending resolution shall define the change or
 16 boundary as amended, shall order the official map to be changed
 17 to reflect the amendment and shall amend the section of the res-
 18 olution incorporating the same and shall reincorporate the map as
 19 amended. If within 14 days after the date of the conclusion of the
 20 hearing, a petition signed by the owners of 20% or more of any
 21 property proposed to be rezoned, or by the owners of 20% of the
 22 total area, except public streets and ways, located within 1,000 feet
 23 of the boundaries of the property proposed to be rezoned is filed
 24 in the office of the county clerk, the amendment shall not be passed
 25 except by unanimous vote of the board of county commissioners.

26 [(b) If the board of county commissioners of Franklin county
 27 determines it is necessary to zone within the unincorporated areas
 28 of the county, the board of county commissioners shall submit the
 29 question of the initial zoning for approval by a majority of the
 30 qualified electors of the unincorporated areas of the county voting
 31 at an election called and held on the question. The election shall
 32 be called and held in the manner prescribed by the general bond
 33 law. If the question of initial zoning is approved as provided in this
 34 subsection, any amendment or change in zoning shall be made as
 35 otherwise provided by law without requiring an election on the
 36 amendment or change.

37 [(c) *If the board of county commissioners of Montgomery county*
 38 *determines it is advisable to zone within the unincorporated areas*
 39 *of the county, the board of county commissioners of such county*
 40 *shall first submit the proposition to create zoning districts and reg-*
 41 *ulate and restrict the use of property within such unincorporated*
 42 *area to the qualified electors of the unincorporated areas of the*
 43 *county at an election called and held on the question and no such*

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1 regulations shall be applied or enforced within such unincorporated
 2 area without first having been approved by a majority of the electors
 3 voting at such election. The election shall be called and held in the
 4 manner prescribed by the general bond law. Any zoning districts
 5 or regulations or restrictions on the use of buildings or land within
 6 the unincorporated area of Montgomery county adopted by the board
 7 of county commissioners of such county prior to the effective date
 8 of this act shall be null and void and shall have no force and effect
 9 without first having been approved by a majority of the qualified
 10 electors of the unincorporated areas of the county voting at an
 11 election called and held in accordance with this subsection. If the
 12 question of initial zoning is approved as provided in this subsection,
 13 any amendment or change in zoning shall be made as otherwise
 14 provided by law without requiring an election on the amendment
 15 or change.

16 ~~Sec. 3. K.S.A. 19-101a is hereby amended to read as follows:~~

17 ~~19-101a. (a) The board of county commissioners may transact all~~
 18 ~~county business and perform all powers of local legislation and~~
 19 ~~administration it deems appropriate, subject only to the following~~
 20 ~~limitations, restrictions or prohibitions: (1) Counties shall be subject~~
 21 ~~to all acts of the legislature which apply uniformly to all counties.~~

22 ~~[(2) Counties may not consolidate or alter county boundaries.~~

23 ~~[(3) Counties may not affect the courts located therein.~~

24 ~~[(4) Counties shall be subject to acts of the legislature prescrib-~~
 25 ~~ing limits of indebtedness.~~

26 ~~[(5) In the exercise of powers of local legislation and adminis-~~
 27 ~~tration authorized under provisions of this section, the home rule~~
 28 ~~power conferred on cities to determine their local affairs and gover-~~
 29 ~~nement shall not be superseded or impaired without the consent~~
 30 ~~of the governing body of each city within a county which may be~~
 31 ~~affected.~~

32 ~~[(6) Counties may not legislate on social welfare administered~~
 33 ~~under state law enacted pursuant to or in conformity with public~~
 34 ~~law No. 271—74th congress, or amendments thereof.~~

35 ~~[(7) Counties shall be subject to all acts of the legislature con-~~
 36 ~~cerning elections, election commissioners and officers and their du-~~
 37 ~~ties as such officers and the election of county officers.~~

38 ~~[(8) Counties shall be subject to the limitations and prohibitions~~
 39 ~~imposed under K.S.A. 12-187 to 12-195, inclusive, and amendments~~
 40 ~~thereto, prescribing limitations upon the levy of retailers' sales taxes~~
 41 ~~by counties.~~

42 ~~[(9) Counties may not exempt from or effect changes in statutes~~
 43 ~~made nonuniform in application solely by reason of authorizing~~

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1 exceptions for counties having adopted a charter for county
2 government.

3 [(10) No county may levy ad valorem taxes under the authority
4 of this section upon real property located within any redevelopment
5 area established under the authority of K.S.A. 12-1772, and amend-
6 ments thereto, unless the resolution authorizing the same specifi-
7 cally authorized a portion of the proceeds of such levy to be used
8 to pay the principal of and interest upon bonds issued by a city
9 under the authority of K.S.A. 12-1774, and amendments thereto.

10 [(11) Counties shall have no power under this section to exempt
11 from any statute authorizing or requiring the levy of taxes and
12 providing substitute and additional provisions on the same subject,
13 unless the resolution authorizing the same specifically provides for
14 a portion of the proceeds of such levy to be used to pay a portion
15 of the principal and interest on bonds issued by cities under the
16 authority of K.S.A. 12-1774, and amendments thereto.

17 [(12) Counties may not exempt from or effect changes in the
18 provisions of K.S.A. 1985 Supp. 19-4601 to 19-4625, inclusive, and
19 amendments thereto.

20 [(13) Except as otherwise specifically authorized by K.S.A. 12-
21 1,101 to 12-1,109, inclusive, and amendments thereto, counties may
22 not levy and collect taxes on incomes from whatever source derived.

23 [(14) Counties may not exempt from or effect changes in K.S.A.
24 19-430, and amendments thereto. Any charter resolution adopted
25 by a county prior to July 1, 1983, exempting from or effecting
26 changes in K.S.A. 19-430, and amendments thereto, is null and
27 void.

28 [(15) Counties may not exempt from or effect changes in K.S.A.
29 19-302, 19-502b, 19-503, 19-805 or 19-1202, and amendments
30 thereto.

31 [(16) Counties may not exempt from or effect changes in K.S.A.
32 13-13a26, and amendments thereto. Any charter resolution adopted
33 by a county, prior to the effective date of this act, exempting from
34 or effecting changes in K.S.A. 13-13a26, and amendments thereto,
35 is null and void.

36 [(17) Counties may not exempt from or effect changes in K.S.A.
37 71-301, and amendments thereto. Any charter resolution adopted
38 by a county, prior to the effective date of this act, exempting from
39 or effecting changes in K.S.A. 71-301, and amendments thereto, is
40 null and void.

41 [(18) Counties may not exempt from or effect changes in K.S.A.
42 19-15,139, 19-15,140 and 19-15,141, and amendments thereto. Any
43 charter resolution adopted by a county prior to the effective date

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1 of this act, exempting from or effecting changes in such sections is
2 null and void.

3 [(19) Counties may not exempt from or effect changes in the
4 provisions of K.S.A. 12-1223, 12-1225 and 12-1226 and K.S.A. 1985
5 1989 Supp. 12-1225a, 12-1225b and 12-1225c, and amendments
6 thereto.

7 [(20) Counties may not exempt from or effect changes in the
8 provisions of K.S.A. 19-211, and amendments thereto.

9 [(21) Counties may not exempt from or effect changes in the
10 provisions of K.S.A. 19-4001 to 19-4015, inclusive, and amendments
11 thereto, K.S.A. 1986 Supp. 19-4002a or 19-4002b.

12 [(22) Counties may not regulate the production or drilling of
13 any oil or gas well in any manner which would result in the du-
14 plication of regulation by the state corporation commission and the
15 Kansas department of health and environment pursuant to chapter
16 55 and chapter 65 of the Kansas Statutes Annotated and any rules
17 and regulations adopted pursuant thereto. Counties may not require
18 any license or permit for the drilling or production of oil and gas
19 wells. Counties may not impose any fee or charge for the drilling
20 or production of any oil or gas well.

21 [(23) Counties may not exempt from or effect changes in K.S.A.
22 19-2920, and amendments thereto.

23 [(b) Counties shall apply the powers of local legislation granted
24 in subsection (a) by resolution of the board of county commissioners.
25 If no statutory authority exists for such local legislation other than
26 that set forth in subsection (a) and the local legislation proposed
27 under the authority of such subsection is not contrary to any act
28 of the legislature, such local legislation shall become effective upon
29 passage of a resolution of the board and publication in the official
30 county newspaper. If the legislation proposed by the board under
31 authority of subsection (a) is contrary to an act of the legislature
32 which is applicable to the particular county but not uniformly ap-
33 plicable to all counties, such legislation shall become effective by
34 passage of a charter resolution in the manner provided in K.S.A.
35 19-101b, and amendments thereto.]

36 Sec. 2 [4]. K.S.A. 19-2915 is [19-101a, 19-2915 and 19-2920
37 are] hereby repealed.

38 Sec. 3 [5]. This act shall take effect and be in force from and
39 after its publication in the statute book [Kansas register].

DELETE

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