

Approved April 11, 1991  
Date

MINUTES OF THE HOUSE COMMITTEE ON LOCAL GOVERNMENT

The meeting was called to order by REPRESENTATIVE M. J. JOHNSON at  
Chairperson

2:50 XXX a.m. on APRIL 1, 1991 in room 521-S of the Capitol.

All members were present except:

Representative Bradford, excused  
Representative Boston, excused

Committee staff present:

Mike Heim, Legislative Research Dept.  
Theresa Kiernan, Revisor of Statutes  
Connie Smith, Committee Secretary

Conferees appearing before the committee: None

Chairman Johnson called the committee's attention to a letter written to Senator Don Montgomery from the office of Federal Emergency Management Agency, (Attachment 1); testimony received from Terry Humphrey, Kansas Manufactured Housing Association, (Attachment 2); a letter written to Representative Nancy Brown from Sedgwick County Bureau of Public Services, (Attachment 3); testimony from Kansas Association of Counties, (Attachment 4); statement from Mike Wildgen, City of Lawrence, (Attachment 5); and "Thoughts on Rebuttal of Testimony of Various Individuals on SB 23" from Wichita Area Builders Association, (Attachment 6) in regard to SB 23.

Chairman Johnson called on the subcommittee chairman, Vice-Chairman Gomez, to give the committee's recommendations on SB 23, planning and zoning. Vice-Chairman Gomez called the committee's attention to a proposed amendment of SB 23 which the subcommittee had agreed to. (Attachment 7) Vice-Chairman Gomez gave an in-depth review of the proposed amendment.

Vice-Chairman Gomez moved to discuss the subcommittee's report. The motion was seconded by Representative Brown. The motion carried.

Chairman Johnson turned the committee's attention to page 19, New Section 21. Vice-Chairman Gomez stated that on page 19, line 35 a conferee had requested an amendment to add the word "entire" between the word "the" and "zoning". Discussion followed.

Representative Brown moved to accept the subcommittee's amendment and add on page 19, in line 35, before "zoning", by inserting "entire", in line 36, by striking "The" and inserting "In addition, the". The motion was seconded by Representative Macy. The motion carried.

Representative Brown moved to pass SB 23 as amended; seconded by Representative Wempe. The motion carried.

DISCUSSION AND POSSIBLE ACTION

HB 2607 - Transfer of cemetery property from Ford county to Dodge City authorized.

Staff gave a briefing of HB 2607. Committee discussion followed.

Representative Mollenkamp moved to pass HB 2607 favorably; seconded by Representative Minor. The motion carried.

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON LOCAL GOVERNMENT,

room 521-S, Statehouse, at 2:50 ~~am~~ p.m. on APRIL 1, 1991

HB 2606 - Transfer of title to public streets, avenues, alleys, and adjacent rights-of-way between cities.

Representative Gomez moved to pass HB 2606 favorably; seconded by Representative Welshimer. The motion carried.

Representative Watson moved to approve the minutes of March 28, 1991; seconded by Representative Gomez. The motion carried.

Meeting adjourned at 3:15 p.m.





# Federal Emergency Management Agency

Washington, D.C. 20472

February 6, 1991

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

The Honorable Don Montgomery  
State Senator  
Special Committee on Local Government  
1218 Main  
Sabetha, Kansas 66534

Dear Senator Montgomery:

Enclosed is a copy of the letter sent to Governor Finney of Kansas regarding the status of the agricultural exemption issue. A letter dated September 28, 1990 (copy attached) was sent to former Governor Hayden, the Federal Emergency Management Agency (FEMA) requesting that the Kansas State Attorney General submit a legal opinion on whether there are provisions in Kansas statutes, which preclude Kansas counties from regulating any development within designated flood hazard areas.

Governor Hayden's office has submitted a draft of revised legislation to address the deficient language regarding the regulation of all agricultural development in the 100-year floodplain. In a letter from the Region VII Director, Richard Mellinger to Jack Parry of Governor Finney's Transition Team Office, dated December 17, 1990, several concerns of FEMA's Office of General Counsel were provided regarding various provisions of the legislation. Since that letter, there have been discussions and correspondence between the regional office and the Governor's Office regarding the agricultural exemption issue.

In order for the 40 counties to fully comply with the minimum requirements of the National Flood Insurance Program (NFIP), legislative action must be taken prior to April 14, 1991, the close of the 1991 Kansas State Legislative session.

Unless legislative action is taken prior to the end of the 1991 legislative session to revise the current state legislation to meet NFIP regulations, FEMA will initiate procedures for suspension from the NFIP after (April 14, 1991.) The consequences of suspension were set forth in the September 28th letter to Governor Hayden. To reiterate, failure to take the necessary actions to amend the state statutes would jeopardize the eligibility of the unincorporated areas of the forty counties for flood insurance under the NFIP and, as a result, their eligibility for certain Federal Disaster assistance.

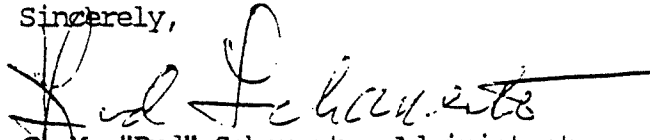
There are nearly 772 existing flood insurance policies within these communities. These policies, which have \$34,249,900 in coverage, would expire at the end of their terms and no new policies could be purchased, if the forty counties were suspended from the NFIP.

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4-1-91  
Attach. 1

It is our expectation that the Kansas State Legislature will take the necessary action during the 1991 legislative session to provide these communities with the enabling authorities required to continue their participation in the NFIP. We look forward to working with you to provide assistance in resolving the agricultural exemption issue.

If you should have any questions regarding this letter, please contact Mr. Richard Mellinger, Regional Director of the Region VII office at (816) 283-7060 or myself at (202) 646-2781.

Sincerely,

  
C. M. "Bud" Schauerte, Administrator  
Federal Insurance Administration

Enclosure



# Federal Emergency Management Agency

Washington, D.C. 20472

SEP 28 1990

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

The Honorable Mike Hayden  
Governor of Kansas  
Topeka, Kansas 66612

Dear Governor Hayden:

Forty counties in the State of Kansas are currently participating in the National Flood Insurance Program (NFIP) administered by the Federal Emergency Management Agency (FEMA). Under the National Flood Insurance Act of 1968, 42 U.S.C. Section 4001, et seq., flood insurance is made available to communities only if the community has adopted and is enforcing floodplain management regulations meeting minimum NFIP criteria. These regulations must be applied to all development in the community's designated flood hazard areas.

The existing Kansas state statutes do not allow counties to apply zoning regulations to the existing structures nor the existing use of any buildings or land used for agricultural purposes. The specific language in the Kansas State Statutes is at Sections 19-2908 and 19-2921 and exempts from regulation "the use of land for agricultural purposes, the erection or maintenance of buildings thereon for such purposes so long as such land and buildings erected thereon are used for agricultural purposes."

It is FEMA's statutory obligation to inform you that, due to this deficiency in the Kansas statutes, the counties cannot comply with the NFIP minimum requirements. Exemption of any land or type of development within a special flood hazard area from the minimum NFIP requirements is in violation the legislation establishing the NFIP (Sections 1315 and 1305(c) of the National Flood Insurance Act of 1968). These sections prohibit FEMA from making flood insurance available in a community unless that community adopts floodplain management measures with effective enforcement provisions that meet minimum NFIP standards. (See also 44 C.F.R. Section 60.2 of FEMA's regulations controlling the NFIP).

2.

We request that you provide FEMA with a legal opinion from the Kansas Attorney General on whether the provisions cited above or any other provisions in Kansas statutes provide exemptions, which may preclude Kansas counties from regulating all development within designated flood hazard areas. If this legal opinion confirms our belief that the counties do not have the authority to fully enforce their floodplain management regulations for all development in designated flood hazard areas, then the Kansas Legislature will have to take action to correct this deficiency during the 1991 legislative session. This legal opinion should be provided to FEMA on or before November 19, 1990, so that FEMA's Office of General Counsel will have an opportunity for review prior to the start of the 1991 Kansas Legislative session.

If FEMA's concerns are confirmed by the legal opinion, the Kansas statutes would require amendment to empower counties to apply floodplain management regulations to buildings used for agricultural purposes and all other development in designated flood hazard areas. Failure to take the necessary actions to amend the state statutes would jeopardize the eligibility of the counties for flood insurance under the NFIP and, as a result, their eligibility for certain Federal Disaster assistance.

The consequences of suspension from the NFIP for the unincorporated counties would be twofold. First, there are nearly 772 existing flood insurance policies within these communities. These policies, which represent \$34,249,900 in coverage, would expire at the end of their terms and no new policies could be purchased. Second, suspended communities are also subject to the provision of Section 202 of Public Law 93-234, the Flood Disaster Protection Act of 1973, as amended. This Section prohibits Federal agencies and officers from approving any form of loan, grant, guaranty, insurance payment, rebate, subsidy, disaster assistance loan or grant (in connection with a flood), or any other form of direct Federal assistance for acquisition or construction purposes within special flood hazard areas of suspended communities. Included in this prohibition, for example, is the making of mortgage loans guaranteed by the Veterans Administration or insured by the Federal Housing Administration. Approval of mortgage loans, secured by homes or farm buildings, by the Farmers Home Administration, Department of Agriculture, is similarly prohibited. Conventional loans from Federally insured or regulated lending institutions would be available at the discretion of the lenders.

As you may know, FEMA has initiated suspension procedures for 60 Missouri counties under 44 C.F.R. Section 59.24(a) of the NFIP regulations. Under this Section, the counties will be subject to suspension from the NFIP effective on March 4, 1991. Missouri has

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3.

deficient State enabling legislation which excludes lands used for agricultural purposes and levee and drainage districts from local floodplain management ordinances. FEMA has been working closely with State officials to develop legislation that would provide the necessary enabling authority. If FEMA receives documentation that the State has passed and the Governor has signed adequate remedial legislation prior to the scheduled suspension date, FEMA will terminate the suspension process. As a follow up to the Missouri action, FEMA has identified and initiated action to address similar agricultural exemptions that are believed to exist in several other States.

Please be assured that it is not my intent or desire to suspend Kansas counties from the NFIP. I understand the importance of flood insurance availability to the residents of these counties and will provide what assistance I can in resolving this issue through the legislative process. If you or your staff should have any questions regarding this letter, please contact Mr. Richard Mellinger, Regional Director of the Region VII office at (816) 283-7060 or myself at (202) 646-2717.

It is our expectation that, having been apprised of the problem, the State of Kansas will take the necessary action during the 1991 legislative session to provide these communities with the enabling authorities required to continue their participation in the NFIP. We look forward to working with you to provide assistance in resolving the agricultural exemption issue.

Sincerely,



C. M. "Bud" Schauerte, Administrator  
Federal Insurance Administration



KANSAS COUNTIES PARTICIPATING  
IN THE  
NATIONAL FLOOD INSURANCE PROGRAM (NFIP)

Allen  
Barton  
Bourbon  
Brown  
Butler  
Chase  
Cherokee  
Clay  
Cowley  
Crawford  
Dickinson  
Doniphan  
Douglas  
Ellis  
Ford  
Franklin  
Geary  
Harvey  
Jackson  
Jefferson

Johnson  
Kearny  
Kingman  
Labette  
Leavenworth  
Lyon  
Marshall  
McPherson  
Montgomery  
Nemaha  
Pawnee  
Pottawatomie  
Reno  
Rice  
Riley  
Saline  
Sedgwick  
Shawnee  
Sumner  
Wilson

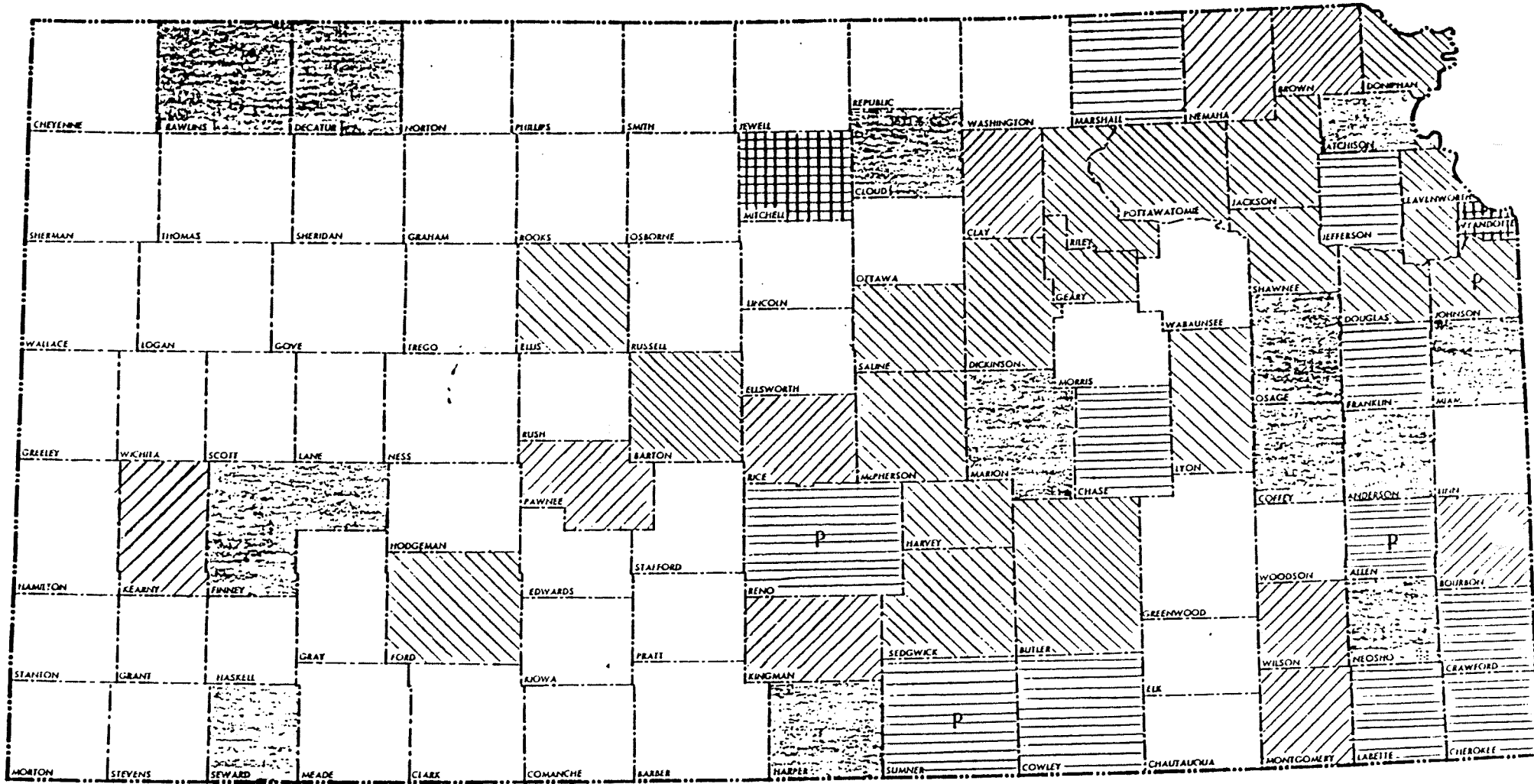
KANSAS COUNTIES NOT PARTICIPATING  
IN NFIP BUT WITH  
IDENTIFIED SPECIAL FLOOD HAZARD AREAS

Anderson  
Atchison  
Cloud  
Coffey  
Decatur  
Finney  
Harper  
Marion  
Miami  
Mitchell\*  
Neosho  
Osage  
Rawlins  
Seward  
Wyandotte\*

\*Suspended

COUNTIES IN NATIONAL FLOOD INSURANCE PROGRAM

KANSAS



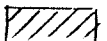
Regular w/FIS



Emergency



Non-participating but w/SFHA



Regular



Suspended

P - - FIS in progress

8-1



# Federal Emergency Management Agency

Region VII  
911 Walnut Street, Room 200  
Kansas City, MO 64106

February 11, 1991

The Honorable Don Montgomery  
Kansas State Senate  
State Capitol  
Topeka, Kansas 66603

Dear Senator Montgomery:

This is to confirm that both FEMA's Office of Loss Reduction and Office of General Counsel are in agreement that the second copy of the revised language for Senate Bill No. 23 - February 7, 1991, will satisfy the minimum requirements for the National Flood Insurance Program (NFIP).

The only concern is that the revised Kansas statutes, Section 30, would not be in effect until January 1, 1992. For the purposes of the NFIP, the Kansas counties should be allowed to fully enforce their local floodplain management ordinances as soon as the legislation is passed and approved by the Governor. We recommend that the effective date for the revised Kansas statutes be ninety days from the close of the 1991 legislative session - April 14, 1991. This time period would allow for necessary notifications of the changes in the State statutes. It is our understanding that the new statutes could be in effect as early as July, 1991.

If you should have any questions regarding this letter, please do not hesitate to call our office at (816) 283-7002. Thank you for your assistance in this matter.

Sincerely,

A handwritten signature in black ink, appearing to be "S. R. Mellinger".

S. R. Mellinger  
Regional Director



# Federal Emergency Management Agency

Region VII  
911 Walnut Street, Room 200  
Kansas City, MO 64106

MAR -7 1991

The Honorable Don Montgomery  
Kansas State Senate  
State Capitol  
Topeka, Kansas 66603

Dear Senator Montgomery:

FEMA's Office of Loss Reduction and Office of General Counsel have responded to the latest revised language for Senate Bill No. 23. One change was proposed by the League of Municipalities and the other by the Kansas Farm Bureau.

We have notified both organizations of our review. A copy of each letter is enclosed for your information.

If you should have any questions regarding this letter, please do not hesitate to call our office at (816) 283-7002. Thank you for your assistance in this matter.

Sincerely,

*for Stephen R. Harrell*  
S. R. Mellinger  
Regional Director



# Federal Emergency Management Agency

Region VII  
911 Walnut Street, Room 200  
Kansas City, MO 64106

MAR - 1 1991

Mr. Jim Kaup  
League of Kansas Municipalities  
112 West Seventh Street  
Topeka, Kansas 66603


Dear Mr. Kaup:

I have received a response to FEMA's review of your organizations proposed amendment to New Section 27 (formerly New Section 26) in Senate Bill 23.

FEMA's Office of Loss Reduction and Office of General Counsel have agreed that the proposed language is acceptable. It has been recommended that if amendments are being considered, the following more complete reference to the National Flood Insurance Act might be included, "... any requirements of the National Flood Insurance Act of 1968, as amended, (42 U.S.C. 4001 et seq.), or any of the regulations which implement that legislation."

If I can be of any further assistance in this matter, please feel free to contact me at (816) 283-7060.

Sincerely,

  
S. R. Mellinger  
Regional Director



# Federal Emergency Management Agency

Region VII  
911 Walnut Street, Room 200  
Kansas City, MO 64106

MAR - 1 1991

Mr. Ed Horne  
Kansas Farm Bureau  
2627 KFB Plaza  
Manhattan, Kansas 66502

Dear Ed:

I have received a response to FEMA's review of the proposed amendment to Senate Bill 23 which your organization faxed to this office on February 21, 1991.

FEMA's Office of Loss Reduction has reviewed the proposal with the Office of General Counsel and determined that this language remains unacceptable due to the phrase, "those agricultural uses and purposes that are inconsequential to the impediment of the floodplain and floodway". The term "inconsequential" is too vague and ambiguous. FEMA is concerned that this language could create disputes between the State and FEMA in determining what types of agricultural activities may be "inconsequential to the impediment of the floodplain and floodway" and still be consistent with the NFIP regulations.

If I can be of any further assistance in this matter, please feel free to contact me at (816) 283-7060.

Sincerely,

A handwritten signature in black ink, appearing to be "S. R. Mellinger".

S. R. Mellinger  
Regional Director

TESTIMONY BEFORE THE  
HOUSE LOCAL GOVERNMENT SUBCOMMITTEE

TO: Representative George Gomez, Chairman and  
Members of the Subcommittee

FROM: Terry Humphrey, Executive Director  
Kansas Manufactured Housing Association

DATE: March 27, 1991

RE: Senate Bill 23

Mr. Chairman and members of the subcommittee, Kansas Manufactured Housing Association (KMHA) supports SB 23 new Section 21 as written which says that local governments shall not exclude manufactured housing from its zoning jurisdiction or residential design manufactured homes from single family residential districts solely because it's a manufactured home.

However, local governments can establish appearance standards for manufactured housing to insure it's compatibility with site built housing.

New Section 21 is needed to provide statutory guidance for local governments about manufactured housing. Most local governments that have zoning exclude manufactured housing from single family residential districts. This discrimination is based on out dated information about manufactured housing and encouraged by local building trades who fear competition.

Nationally there has been an effort to deal with this situation. Since 1979, eighteen states have passed fair zoning provisions for manufactured housing and two states work under court order.

Frequently, I have been asked will Section 21 prevent local control of manufactured housing and the answer is no. Under Section 21 local governments are free to regulate the placement of manufactured housing based on a list of appearance standards that assure residential compatibility.

Also, local governments are free to regulate the installation of manufactured housing and utility hookups. Manufactured housing would have to meet all the same development standards (lot size, set backs, side and rear yard requirements, etc.).

*LH*  
*4-1-91*  
*attch 2*



In closing, I would like to remind you that manufactured housing is affordable housing and it comes in a variety of designs - some that are virtually indistinguishable from traditional site built housing. Yet, in Kansas many local governments exclude this housing. Therefore, without state intervention it is unlikely that manufactured housing will be accepted.

Kansans need housing choices, the Kansas Manufactured Housing Industry, 4 plants and allied industries, need a level playing field to market their housing. Please support SB 23, and new Section 21. Thank you.



## SEDGWICK COUNTY, KANSAS

BUREAU OF PUBLIC SERVICES

1250 S. SENECA  
WICHITA, KANSAS 67213-4498  
PHONE: 383-7901  
FAX: 313-263-9241

March 26, 1991

Representative Nancy Brown  
Chair of the House Local Government Sub-Committee  
Room 183-W  
State Capitol Building  
Topeka, KS 66612

Dear Representative Brown:

Re: Senate Bill 23

As a Floodplain Management Technician for Sedgwick County Bureau of Public Services, I have been asked to review Senate Bill 23 as Amended by the Senate.

Sections 15 and 17 of Senate Bill 23 are parts of K.S.A. 12- 734 and 735 revised. Upon entering the National Flood Insurance Program (NFIP), the Federal Emergency Agency (FEMA) furnishes each community with a model ordinance to follow in the writing of the communities own ordinance or resolution. It is redundant and time consuming to have these ordinances or resolutions reviewed and approved by the chief engineer of the Division of Water Resources, Kansas State Board of Agriculture. What happens to a community that has used the FEMA model ordinance to write their ordinance or resolution, sent it to the chief engineer for review and approval, and it is NOT approved? Since the Division of Water Resources (DWR) is the state coordinator between FEMA and the local communities it is only appropriate that DWR should have on file copies of each community's FEMA approved floodplain management ordinance or resolution.

The model ordinance contains language FEMA has determined to be the minimum for a community to participate in the NFIP. This ordinance or resolution is reviewed and approved by the FEMA Region VII Office. Upon entering into the NFIP the community is subject to periodic inspections by the Corp. of Engineers, Federal Emergency Management Agency and/or its federal contract agency. After being through one audit I found that the federal

page 1

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Attach. 3

agencies are very thorough in the field inspection of Sedgwick County.

The following is a brief history of Sedgwick County's floodplain management resolutions. The first was approved by the Board of County Commissioners in June 1975 and was not approved by DWR. The County entered the Regular Program of the NFIP in June 1986 and this resolution was not approved by DWR. The County revised its floodplain management resolution, on the instructions of FEMA, September 7, 1988 and this resolution was approved by DWR on October 28, 1988. Because of some typographical errors the FEMA Region VII Office required the County to correct this resolution and have the County Board pass the correction resolution to be in compliance with the minimum regulations of the NFIP. It is interesting that DWR did not find these errors, which leads me to believe that DWR did not read the resolution. The resolution had been sent to DWR for review and approval as per K.S.A. 12-734 and 12-735. This type of review and approval serves no practical or logical purpose. At the instruction of FEMA the County corrected the errors and sent a copy to FEMA and DWR for approval. FEMA approved the corrected resolution and as of this date NO approval or correspondence has been received from the Division of Water Resources concerning this resolution.

It has been stated by employees of the Division of Water Resources that without authority to approve local regulations the DWR can not enforce the regulations of the floodplains. Sedgwick County Bureau of Public Services has requested assistance from DWR to stop the changing of a particular floodplain for more than a year. DWR did finally write a letter to the land owner. The problem still exists. It does not appear that DWR is using their control. DWR staff have stated that there is currently only one staff member in the FEMA Office in Kansas City. In fact there is a community representative for the state Kansas and a hydrologist that serves four (4) states in this office. The hydrologist processes all requests for Letter of Map Amendment or Revision. Not until 1989 and with a FEMA grant did the State of Kansas have the full time coordinator. The FEMA Office is not the place for individuals to complain, they should take their concerns to the local governing body. If the local governing body does not manage the flood plains within the rules of FEMA the community is placed on sanction. It is true that an individual project is not sanctioned, however, the sanction is placed on the community at large and each holder of a National Flood Insurance policy is charged a \$25 fee.

In the past years, Sedgwick County has experienced a time frame of four (4) months to four and one-half (4 1/2) years to obtain from DWR approval for various County and private projects. With this in mind, it is hard for me to understand how the Division of Water Resources can review and approve all of the proposed ordinances and/or resolutions within the proposed 90 day time limit. All FEMA related changes in ordinances and/or resolutions are made at the same time. I would think that this would require additional staff in the Division of Water Resources. If this is true, what will these employees be doing between federally mandated floodplain resolution changes? Does the chief engineer wish to increase his staff and this is the perfect tool? Why is, with low budget and staff DWR "establishing reducing-requirement permits, known as general permits" while at the same time pushing so hard to review and approve a FEMA mandated resolution? Any development within a

mapped floodplain is required by Federal regulations to meet certain standards. A Development Permit must be applied for and approved by the local governing body. For example all bridge and highway work that is done within a mapped floodplain is required to have such a permit prior to any work being done. As of this date No department of the state has applied for and obtained a Development Permit from Sedgwick County. Federal regulations are clear, the local government has the sole authority not the state. In this case the state has less authority than the local governing body under local regulations. The penalty set forth in the model ordinance and adopted by the County Board is equal to or greater than that in the proposed state statutes.

On Page 29, lines 2 through 5, the provision that is being proposed to K.S.A. 24-126 to exempt all properly placed fills within the flood fringe for those communities in good standing with the NFIP is a good provision. FEMA guidelines state that the fill within a flood fringe cannot increase the

Base Flood Elevation (100-year flood) more than one (1) foot within the reach that has been studied. It has been said that "historically , this agency (DWR) has exercised its authority concerning floodway fringe fills to assist individuals in resolving differences in problems unrelated to strictly floodplain insurance program requirements." The local community should have the authority to assist individuals in floodplain problems and if the problem is to great for some communities then refer to DWR for assistance.

It is interesting to note that no staff member of DWR has mentioned that any work done by either an individual, corporation or community can change the course, current or cross section of a drainage pattern under K.S.A. 82a-301 thru 305a must be approved by DWR. These statues protect the drainage patterns of the State of Kansas and give the authority of control to the chief engineer of the Division of Water Resources. All water structures are required to have a permit from DWR therefore, DWR is really requesting the authority to control all fills within the mapped floodplain.

Sincerely,



Robert George,  
Floodplain Management Technician

enclosure

cc: Representative Elizabeth Baker, Room 175-W  
Representative Tom Bishop, Room 284-W  
Representative Rick Bowden, Room 281-W  
Representative Georgia Bradford, Room 183-W  
Representative Darlene Cornfield, Room 448-N  
Representative Ann Cozine, Room 112-S

Representative Theo Cribbs, Room 273-W  
Representative George Dean, Room 279-W  
Representative Wanda Fuller, Room 328-S  
Representative Diane Gjerstad, Room 115-S  
Representative Ken Grotewiel, Room 426-S  
Representative Henry Helgerson Jr., Room 281-W  
Representative Richard Lahti, Room 281-W  
Representative Barbara Lawrence, Room 170-W  
Representative Jo Ann Pottorff, Room 183-W  
Representative Tom Sawyer, Room 180-W  
Representative Jack Sluiter, Room 182-W  
Representative Susan Wagle, Room 170-W  
Representative Darrel Webb, Room 278-W  
Representative Gwen Welshimer, Room 279-W  
Representative Lisa Benlon, Room 170-W  
Representative Garry Boston, Room 181-W  
Representative George Gomez, Room 279-W  
Representative Jesse Harder, Room 284-W  
Representative Gary Hayzlett, Room 446-W  
Representative Walker Hendrix, Room 446-W  
Representative Carl Holmes, Room 156-E  
Representative Mary Johnson, Room 426-S  
Representative Judith Macy, Room 272-W  
Representative Melvin Minor, Room 273-W  
Representative Gayle Mollenkamp, Room 174-W  
Representative Stevi Stephens, Room 426-S  
Representative Tom Thompson, Room 112-S  
Representative Robert Watson, Room 431-N  
Representative Jack Wempe, Room 284-W  
M.S.Mitchell  
Senate Bill 23 File



"Service to County Government"

212 S.W. 7th Street  
Topeka, Kansas 66603  
(913) 233-2271  
FAX (913) 233-4830

**EXECUTIVE BOARD**

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Edwards County Commissioner  
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Shawnee County Commissioner  
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Shawnee County Engineer  
(913) 266-0192

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Johnson County Commissioner  
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John Delmont  
Cherokee County Commissioner  
(316) 848-3717

Berneice "Bonnie" Gilmore  
Wichita County Clerk  
(316) 375-2731

Betty McBride  
Cherokee County Treasurer  
(316) 429-3848

Roy Patton  
Harvey County Weed Director  
(316) 283-1890

Gary Post  
Seward County Appraiser  
(316) 624-0211

Nancy Prawl  
Brown County Register of Deeds  
(913) 742-3741

Vernon Wendelken  
Clay County Commissioner  
(913) 461-5694

**NACo Representative**

Keith Devenney  
Geary County Commissioner  
(913) 238-7894

**Executive Director**

John T. Torbert

March 28, 1991

To: House Local Government Subcommittee

From: Kansas Association of Counties

Re: SB 23

The Kansas Association of Counties supports the concept of the recodification of the planning and zoning laws. However, there continues to be a concern with the manufactured housing section of the bill.

Throughout the hearings held on this bill, the KAC has recommended that final authority for the restriction and regulation of manufactured housing rest with the governing body of the city or county.

We offered an amendment in the Senate Local Government Committee that would allow for local governments to have this final authority. The amendment stated that " The governing body shall not adopt or enforce zoning regulations which have the effect of excluding manufactured homes from the entire zoning jurisdiction of the governing body."

We asked that the word "entire" be included so that the county would be allowed to designate areas for manufactured housing. We feel this language strikes an appropriate balance between local government and the special interests of manufactured housing.

We urge your favorable consideration of this legislation with the amendment as suggested.

LD  
4-1-91  
Attach 4



# City of Lawrence KANSAS

MIKE WILDGEN, CITY MANAGER

CITY OFFICES 6 EAST 6th  
BOX 708 66044-0708 913-841-7722

CITY COMMISSION  
MAYOR  
SHIRLEY MARTIN-SMITH  
COMMISSIONERS  
ROBERT L. WALTERS  
DAVID PENNY  
MIKE RUNDLE  
BOB SCHUMM

TO: Honorable Chair Representative Mary Jane Johnson and  
Members of the House Local Government Committee  
FROM: Mike Wildgen, City of Lawrence  
DATE: March 22, 1991  
RE: Senate Bill 23

On January 8, 1991, the Lawrence City Commission adopted a Legislative Program which included the following section supporting the recodification and modernization of Kansas planning and zoning statutes:

Lawrence is a community that has benefited from the progressive practice of land use controls and regulations. However, existing state statutes authorizing cities to exercise zoning and other land use powers are old and cumbersome and in need of updating. There is confusion regarding certain statutory procedural requirements, court interpretations are at variance with sound planning policy, and the statutes -- in many cases dating back to the founding days of zoning -- neither reflect current practices nor account for modern land use control tools.

To address this problem, the Kansas Chapter of the American Planning Association and other interested groups have sought legislation to recodify city and county planning and zoning statutes. During the 1990 interim, the Special Committee on Local Government has extensively reviewed this issue (Proposal No. 22). The Special Committee has drafted a bill for introduction in the 1991 Session which addresses many recodification concerns. It is hoped that through committee hearings and legislative debate a comprehensive rewriting of Kansas planning and zoning laws can be accomplished that reflects the need of Kansas cities and counties, landowners and other community members.

**POSITION ADOPTED:** The City Commission generally supports the recodification and modernization of planning and zoning laws.

Additionally, on March 19, 1991, the Lawrence City Commission urged the Legislature to provide for a 20-day notice requirement (versus a lesser time) for notices required by law.

The City of Lawrence appreciates this opportunity to express its support for the modernization of our Kansas zoning laws.



LS  
4-1-91  
Attach. 5

3/28/91

THOUGHTS ON REBUTTAL OF TESTIMONY OF VARIOUS INDIVIDUALS  
ON SENATE BILL 23

SAM EBERLY

Sam describes himself as "the common man". So was Mr. Keating! Sam didn't need "Five" because his personal relationship with the Secretary of Agriculture was enough to cause George Austin to write the developer advising that the Teal Brook Estates fill being placed in the floodway fringe area required a permit under K.S.A. 24-126 and that failure to apply for that permit would be considered a violation subject to its provisions for violations. A copy of Austin's letter went to Eberly, his attorney and the Chief Engineer of DWR. That letter effectively stopped work on the subdivision for months.

Shortly thereafter, the Chief Engineer wrote the City of Wichita rescinding the advice given the City by Bill Funk of DWR in August of 1986 in response to a letter from the City Engineer's office specifically requesting guidance in applying the rules of the Regular Phase of the National Flood Insurance Program with respect to floodway fringe fills. No other "common man" has accomplished so much in the DWR, before or since.

Sam correctly notes that in the summer of 1988 property that adjoined his home and farm was sold. Sam knows that because the seller of that land was his ex-landlord, Phillip Kassebaum. In 1985, when Sam bought the 20 acres of Kassebaum property where his house is located, he also bought the 5 acres immediately east of the homesite because it was wooded. When Kassebaum decided to sell the 70 acres east of the old Kassebaum home, Sam would not buy the seventeen acres east of the wooded tract because it was nothing but raw farm ground and in the flood plain, so he let Kassebaum sell it, along with the balance of the remaining 65 acres, to developers.

When the Subdivision Committee of the Metropolitan Area Planning Commission considered the Teal Brook Estates plat, Sam blocked its consideration until he could hire an engineer to appear in opposition based on the increased flood potential caused by the development proposal. After considerable delay, without a promised opposing engineering report or appearance, Sam then asked for a further delay until a ruling could be made by DWR. When advised that the City already had a ruling giving them authority to approve floodway fringe fills, Sam went to the Secretary of Agriculture and got the reversal mentioned above.

29  
4-1-91  
Attach. 6



## Rebuttal of Testimony on Senate Bill 23

Page 2

That was in early September. Three months later the Jerrick Company got its permit with six findings of fact and three conditions of approval. Of the three, only one was significant and is quoted below exactly as appears on the permit attachment:

1. In accordance with the verbal agreement made by Sam Eberly and Rick E. Huffman November 18, 1988, applicant is to reimburse the owner of the residence in the Northeast Quarter of the Northwest Quarter (NE1/4, NW1/4) of Section 12 for reasonable expenses incurred in cleaning the drainageway of silt and debris that runs from the Southeast corner of the residence yard to the Southwest corner of the Teal Brook Estates and deepening by approximately one foot and shaping the overflow channel which crosses the meadow South of the residence. In lieu of reimbursement the applicant may make equipment available to Mr. Eberly to accomplish this work. Any excavated materials from such amelioration works is to be utilized only as fill material with the Teal Brook Estates development. No construction work shall be done on the Northwest Quarter (NW1/4) of Section 12, Township 27 South, Range 2 West, Sedgwick County, Kansas, which will decrease the cross sectional area of the designated floodway in that quarter."

Sam correctly indicates that his home is in the floodplain, it is in fact in the Regulatory Floodway. He also correctly states that I "finally admitted" that it would "force 7/10 of a foot more water on our property," He testified that if that condition had occurred in 1985, he would have had seven inches of water in his home and farm buildings. What he won't understand is that the calculated hydraulic surcharge of 7/10 of a foot in the 100-year frequency flood is due to conditions downstream from Teal Brook Estates, and that the fill done there has absolutely no effect on the surcharge! All of the 100-year flood discharge of 15050 cubic feet per second passes through the opening of the Cowskin Creek bridge west of Sam's home, none of it is calculated to overtop the roadway of 21st Street which is, in effect, a dam. The width of the bridge opening is about 200 feet and all of the flood flow passes through that 200 foot opening at 21st. Street. Downstream from that constriction the effective flow area widens at a ratio of 4 feet downstream to 1 foot of width being constricted on each side of the 21st. bridge so that the portion of the flood plain where Sam's house is, and where the Teal Brook Estates fill was placed, are outside that effective flow cone and provide little or no conveyance to the discharge. Flood water eddys around the edges of the effective flow cone and covers the flood plain in this area but there is no velocity vector which directs it downstream. This type of flooding is known as backwater or more properly "slackwater" flooding and adds to the component of flood plain storage but not conveyance. The flood plain storage of 50 or 60 acre feet on the volume of the 100-year flood is so insignificant that it cannot be estimated.

## Rebuttal of Testimony on Senate Bill 23

Page 3

At no time during the planning of Teal Brook Estates leading to the filing of the Preliminary subdivision Plat did Sam contact the developers or the developer's engineer to discuss the effect of the proposed development on his property, even though he knew them personally. At no time during the Subdivision Committee hearings on the Preliminary and Final Plats did Sam contact the principals in the Teal Brook Estates application to discuss his concerns about the project, even though he was urged to do so by Metropolitan Area Planning Department staff.

During the 2 week delay of the Subdivision Committee hearing on the Final Plat did Sam, or his attorney, contact the Teal Brook Estates principals or their consultants to discuss his concerns. The delay was requested in order to give Sam an opportunity to engage an "engineer" to give "expert" testimony on Sam's behalf. At the SD Committee hearing following the delay, there was no appearance or "expert" testimony from Sam's "engineer".

Sam knew that the house he bought in 1985 was in the flood plain because Eberlys owned all of Cowskin Creek and its flood plain land for the whole mile from 13th Street to 21st Street, before they sold to developers. Sam knew that the Federal Flood Insurance Program which was in effect in both the City of Wichita and Sedgwick County not only permitted, but required, fills in the floodway fringe because a relative, Merle Eberly, had recently subdivided and platted Eberly Glen Addition which is the land immediately south of Teal Brook Estates on which floodway fringe fills had been placed, WITHOUT DWR PERMITS!

Sam owned the house he lives in now in the fall of 1985 when, according to his testimony, "we lacked just one inch from having water in our home." but between the fall of 1985 and the fall of 1988 he did nothing to protect those properties from future flooding. Sam knew that the flood plain and adjacent land east of Cowskin Creek was prime subdivision land, his relatives sold it to developers or developed it themselves, but he turned down an opportunity to buy the 17 or so acres of flood plain land before Kassebaum sold it to the Teal Brook developers and thereby preserve the flood plain adjacent to his property. In short, Sam did nothing to protect his "home and farm buildings" from flooding until Teal Brook Estates was well along the route to becoming a residential development. Then, his response was confrontation, not cooperation and the result of his protest to the state was to get \$1500 worth of work done by the Teal Brook developers on Sam's property and to delay Teal Brook construction for at least 6 months.

## Rebuttal of Testimony on Senate Bill 23

Page 4

The "compromise to assist the drainage away from my property" Sam refers to was Condition 1 of the Permit issued by DWR to Teal Brook when it approved exactly the same plan approved months earlier by the Metropolitan Area Planning Commission and City Council. That condition, agreed to by the Teal Brook developers only because they felt it was necessary for DWR to save face, and in desperation because of the delays, consisted of cleaning out an old creek meander which was the outlet for drainage from Kassebaum's field, and which would be the outlet from the Teal Brook detention pond system which was designed to reduce runoff from the residential subdivision to be less than from Kassebaum's field. The old creek channel needed to be cleaned because it had been neglected for years, but it had absolutely nothing to do with the flood potential at Sam's house. Once again, Sam passed up an opportunity to protect his property from flooding!

It is interesting to note that, although the work required by Condition 1 was in the Regulatory Floodway of Cowskin Creek, and had the effect of changing the cross section and current of flow in the meander channel, no permit was required for this work. Another example of selective enforcement of state regulations.

Sam would have you believe that if it were not for the intervention of DWR he would have been the victim of developers and appointed and elected officials in Wichita. The truth is that there was nothing about the proposed fill in the Teal Brook Estates project that was not in accordance with Federal law and regulations, with the local subdivision regulations designed to implement the Federal flood plain management program or with sound engineering practice. Sam attempted to hire an "engineer" who would side with him and was unable to do so. Sam did hire attorneys to represent him, but they did not challenge the actions of the local governing body in approving the subdivision plat or the state in issuing the permit without any revisions or conditions which materially affected the floodway fringe fills.

## CLARK DUFFY

Duffy relates the Kansas Water Office staff concern that Senate Bill 23 will "eliminate the state's floodplain management program and restrict the local governing bodies floodplain management program." The state of Kansas has no floodplain management program. The state has legislation which enables communities to participate in the Federal flood plain management program in exchange for subsidized flood insurance. It has an employee who is designated as State Coordinator of the Federal program. But the state does no flood plain management itself. All of the maps, studies, reports, ordinances, regulations and other elements of the local flood plain management programs are provided by the Federal government.

## Rebuttal of Testimony on Senate Bill 23

Page 5

Duffy states that most urban flooding problems have been addressed by structural solutions with local, state and federal financing. The facts are that urban flood losses in Kansas continue to increase because of development in flood prone areas prior to the implementation of the Federal program, and that the state had nothing to do with financing structural solutions for urban flood problems.

If the provisions of Senate Bill 23 would indeed "restrict the local governing bodies floodplain management program" it is strange that not one local flood plain manager, planning official or elected officials has raised that issue. Responses from floodplain management staff offered in testimony or in correspondence have supported our position on Sections 17 and 29.

Duffy suggests that rather than address the flood plain management issues in Senate Bill 23 it would be appropriate to use the Kansas Water Planning Process. Based on the KWO staff position that there should be NO development in flood plains I don't think they would ever get around to examining the problems encountered with the application of K.S.A. 24-126 to floodway fringe fills, or to the overlapping jurisdiction found now in K.S.A. 12-734 and 12-735 with respect to ordinances, regulations and changes to them.

## WAYLAND ANDERSON

Much of Anderson's recent testimony is similar to his testimony last October, to which a reply was written. Anderson makes much of the role of the state in protecting individuals who have problems with actions approved, or overlooked, by community officials and the implication that such problems are the result of the community official's failure to abide by the Federal regulations or local ordinances. He states that the one employee assigned to Kansas by FEMA cannot possibly address "individual needs for such a broad and diverse hydrologic area." He makes no specific case for that statement, nor does he offer a solution to individual problems under present law, or how that effectiveness would be lost if Senate Bill 23 passes.

Anderson suggests that individuals feel that local flood plain management ordinances overlook their concerns and that without the state's authority to approve those ordinances, the only recourse is for the individual to seek redress in court. I doubt there has ever been such a case brought to court, and I know of no community which has been threatened by DWR to take disciplinary action if an ordinance is not revised as required by DWR. There is no basis for such claims.

Anderson thinks that the situations or examples of how the levee law (K.S.A. 24-126) is being used to delay and harass developers and individuals wanting to build according to Federal and local flood plain management regulations are "examples of where the regulatory process is working." On this point we

## Rebuttal of Testimony on Senate Bill 23

Page 6

agree! But when the facts are known, as in the case of Teal Brook Estates and Lost Creek Estates, the abuse of the state regulatory process is apparent. In both of those cases, the plans were approved exactly as submitted, but only after long and expensive delays which cost the developers, and eventually the home buying public money. There is no better example of state government interference in the Federal-Local partnership than in the role of DWR in flood plain management.

## ENVIRONMENTAL GROUPS

Wildlife and Parks, Audubon Council and Nature Conservancy do not want to lose the authority they now have in the land-use review process accidentally provided by the DWR administrative ruling that floodway fringe fills are "other improvements" under K.S.A. 24-126, and therefore classed as "water projects" to which the Environmental Coordination Act applies. My position is that if it is appropriate for such agencies to review subdivision plats and development plans for the greater public good, then apply the ECA to all such projects, not just the portions which happen to be mapped to be in the flood plain.

It is obvious that these groups don't think they can persuade local elected or appointed officials that such review is appropriate on all land-use matters, or that they can draft and get passed legislation which requires that level of review, therefore they don't want to lose their accidental powers. Again, this is an excellent example of state interference in local home rule matters that the legislature never intended.





# KANSAS STATE BOARD OF AGRICULTURE

DIVISION OF WATER RESOURCES  
DAVID L. POPE, Chief Engineer-Director  
109 SW Ninth Street, Suite 202  
TOPEKA, KANSAS 66612-1283  
(913) 296-3717

SAM BROWNBACK  
Secretary

October 4, 1988

Mr. Chris J. Breitenstein, P.E.  
City Hall - 7th Floor  
455 N. Main Street  
Wichita, KS 67202

Re: Floodplain Fill, Letter From  
Bill Funk, July 9, 1986

Dear Mr. Breitenstein:

Based on conversations with you and other people from the Wichita area, my staff has informed me that there evidently is a misunderstanding as to the content and application of Mr. Funk's letter, dated July 9, 1986. It is, therefore, my intent by this letter to clarify the issue so as to supersede any understanding, representation, or interpretation of K.S.A. 24-126 that may have been construed from Mr. Funk's letter.

Additionally, certain legislative changes have taken place which further emphasize the need for prior approval by the Chief Engineer. Most notable is the passage of the Environmental Coordination Act, K.S.A. 82a-325 through 327, requires environmental reviews of such projects. To avoid irreversible environmental damage, prior review and approval by this office is a must.

The emphasis of K.S.A. 24-126 (copy enclosed) is on "levees and other such improvements." All levees and other such improvements require the approval of the Chief Engineer.

The basic exception to this rule is for fills in the floodplain where flood elevation is the only hydraulic criteria to be met; i.e. where the fill does not alter or redirect the flow of water nor does it cause a change in the elevation of the water surface profile. This office has not surrendered any of its powers for projects governed by K.S.A. 24-126. It is unlikely that the Chief Engineer could legally transfer the powers to approve these projects to the City of Wichita in connection with levees or improvements which have the effect of a levee.

The City does not have authority to determine whether or not a project is required to comply with K.S.A. 24-126, except in the situation as stated above. Projects which fail to comply are in violation of K.S.A. 24-126 and may be subject to the appropriate penalties or fines.

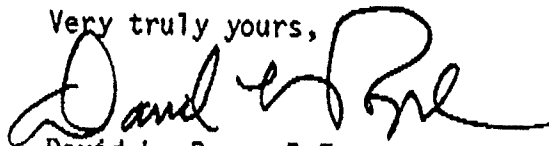
In summary, any fill along a floodway or in a floodway which has the effect of a levee needs to comply with K.S.A. 24-126 and, therefore, should be submitted to this office for proper approval. This approval is contingent on the clearance being obtained through the Environmental Coordination Act, K.S.A. 82a-325 through 327. If the project meets local floodplain ordinances and DWR

Mr. Chris J. Breitenstein  
Page 2  
October 4, 1988

rules and regulations, it is anticipated that with proper plans and notices the project would be approvable. Please note, that such projects require prior approval by the Chief Engineer. After the fact submission of plans under K.S.A. 24-126 would "shortcut" the environmental coordination process and, therefore, constitute a violation of intent of that state law.

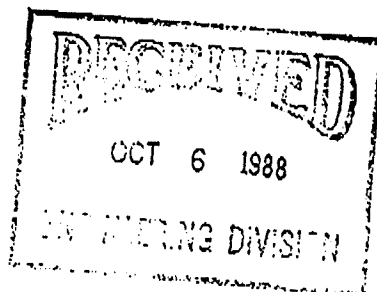
If you have any further questions, please feel free to call me or John Henderson of this office.

Very truly yours,



David L. Pope, P.E.  
Chief Engineer-Director

DLP:GAA:1s



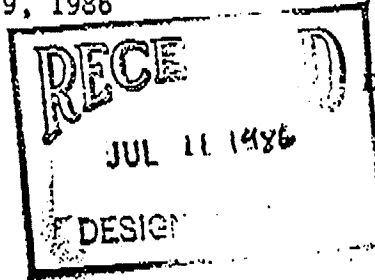


# KANSAS STATE BOARD OF AGRICULTURE

DIVISION OF WATER RESOURCES  
 DAVID L. POPE, Chief Engineer-Director  
 109 SW Ninth Street  
 TOPEKA, KANSAS 66612-1283  
 (913) 296-3717

Mr. Chris J. Breitenstein, P.E.  
 City Hall  
 7th Floor  
 455 N. Main Street  
 Wichita, Kansas 67202

July 9, 1986



~~HARLAND E. FRIDDLE~~

~~Secretary~~

DONALD L. JACKA, JR.  
 Acting Secretary

Re: Fill in floodplains

Dear Chris,

Your letter of July 1, 1986, raises a good question concerning both application of K.S.A. 24-126 to floodplain fills and the amount of paper work and potential time delays involved under the state statute and Wichita floodplain regulations.

Because this agency has not received a copy of the Wichita floodplain ordinance for formal action, I urge you to send one copy of that ordinance either as adopted or in the form presented for final adoption.

The emphasis in 24-126 is on "levee and other such improvement". Within the fringe areas of the floodplain, where flood elevation is the only hydraulic criteria to be met, local action on "another such improvement" under the floodplain regulations is sufficient. This includes the fill for a building to meet elevation requirements. Any actual levee should be submitted for approval of plans under 24-126.

Any building subject to the elevation requirements, for which an elevation variance is sought, is subject to approval in this agency as a variation under K.S.A. 12-734, unless one-half ( $\frac{1}{2}$ ) acre or historic building exemption to the elevation variance applies. This applies in the entire floodplain.

In the floodway portion of the floodplain, any fill or building requires consideration in accordance with K.S.A. 12-734 (floodplain variance). As applicable, other statutes will be considered since the engineering staff will not recommend any project for approval by the Chief Engineer under one statute unless such recommendation can be made under all appropriate statutes. Therefore, the variance requested will also be evaluated against any levee or channel improvement criteria and such fact will be mentioned on the permit or in the cover letter returning approved plans.

In summary, a fill in a fringe area of a floodplain consistent with approved floodplain regulations could be approved under 24-126 if requested, but pursuit of formal approval is not anticipated. Any fill in the floodway portion of the floodplain requires approval as a variance and criteria of a floodplain



Mr. Chris J. Breitenstein

Page 2.

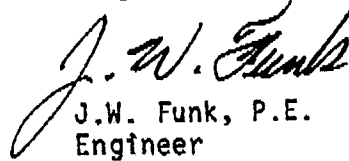
July 9, 1986

fill will be utilized as part of that action.

It appears that the intent of the 1970 Legislature concerning floodplain management was to confer on the Chief Engineer an engineering authority but not a land use authority. Staff recommendations are based on that premise.

If this raises further questions, please feel free to call or write.

Very truly yours,

  
J.W. Funk, P.E.  
Engineer

JWF:cb



# KANSAS STATE BOARD OF AGRICULTURE

DIVISION OF WATER RESOURCES  
 DAVID L. POPE, Chief Engineer-Director  
 109 SW Ninth Street, Suite 202  
 TOPEKA, KANSAS 66612-1283  
 (913) 296-3717

SAM BROWNBACK  
 Secretary

September 2, 1988

Mr. Rick E. Huffman, Managing Partner  
 Teal Brook Estates, L. P.  
 Huffman and Associates  
 224 East Douglas  
 Wichita, Kansas 67202

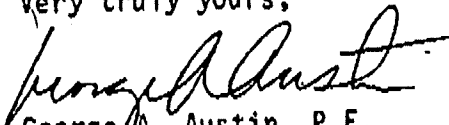
Re: Water Structures No. LSG-049

Dear Mr. Huffman:

It has come to the attention of this office that filling operations have occurred in the floodway fringe area of Cowskin Creek on Teal Brook Estates property. This fill has the effect of a levee and thus requires a permit from this office under the provisions of K.S.A. 24-126. Please find enclosed with this letter the rules and regulations of K.S.A. 24-126 explaining the requirements for approval of levee plans.

Failure to apply for approval of plans will be in violation of K.S.A. 24-126 and may be subject to its provisions for violations. If you have any further questions please feel free to call me or James E. Schoof of this office.

Very truly yours,

  
 George A. Austin, P.E.  
 Head of Water Structures

GAA:ls

Enclosure

pc: Mr. Steve M. Stark, Attorney at Law  
 Fleeson, Gooing, Coulson & Kitch  
 P. O. Box 997  
 Wichita, KS 67201-0997

Mr. Sam Eberly

David L. Pope



# KANSAS STATE BOARD OF AGRICULTURE

DIVISION OF WATER RESOURCES  
DAVID L. POPE, Chief Engineer-Director  
109 SW Ninth Street, Suite 202  
TOPEKA, KANSAS 66612-1283  
(913) 296-3717

SAM BROWNBACK  
Secretary

December 1, 1988

Jerrick Company  
Attn: Rick Huffman  
224 E. Douglas  
Wichita, KS 67202

Re: Teal Brook Estates Fill  
Cowskin Creek  
NW NE 12-T27S-R2W  
DWR-8162

Dear Mr. Huffman:

Consideration has been given to your application for approval of plans to place fill in the Cowskin Creek floodway fringe as part of the Teal Brook Estates development, thus creating a quarter-mile of left bank levee.

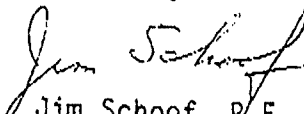
In accordance with provisions of K.S.A. 24-126 with consideration of K.S.A. 12-734 and 735 floodplain management regulations, the Chief Engineer has approved the submitted plans within the attached Conditions of Approval.

One set of plans has been endorsed with the Chief Engineer's approval and will be retained in our files. Partial copies of the approved plans are enclosed.

Comments about this proposed project have been received from several environmental review agencies. Copies of those letters with recommendations are enclosed for your consideration.

This authorization is valid until January 1, 1991. If work has not been completed prior to that date, an extension of time would need to be requested from the Chief Engineer 30 days prior to expiration.

Sincerely,

  
Jim Schoof, P.E.  
Engineer

JS:ls  
Enclosures  
pc: Don Moehring II  
M. D. Jewett

[As Amended by Senate Committee of the Whole]

As Amended by Senate Committee

Session of 1991

SENATE BILL No. 23

By Special Committee on Local Government

Re Proposal No. 22

12-28

3 AN ACT concerning planning and zoning; amending K.S.A. 24-126 ✓  
14 and K.S.A. 1990 Supp. 19-101a and repealing the existing sec- ✓  
15 tions section; also repealing K.S.A. 12-701 to 12-704, inclusive, ✓  
16 12-704a, 12-705, 12-705a, 12-705b, 12-705c, 12-706, 12-706a, 12-  
17 707 to 12-715, inclusive, 12-715a, 12-717 to 12-735, inclusive, 19-  
18 2901, 19-2902, 19-2902a, 19-2902b, 19-2902c, 19-2903, 19-2904,  
19 19-2905, 19-2905a, 19-2906 to 19-2914, inclusive, 19-2916, 19-  
20 2916a, 19-2918, 19-2918a, 19-2918b, 19-2918c, 19-2919, 19-2921,  
21 19-2924, 19-2925, 19-2925a, 19-2926, 19-2926a, 19-2926b, 19-2927  
22 to 19-2934, inclusive, 19-2934a, 19-2935 to 19-2938, inclusive, and  
23 K.S.A. 1990 Supp. 12-716, 19-2915 and 19-2920.

24

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

26 *New Section 1. (a) This act is enabling legislation for the en-*  
27 *actment of planning and zoning laws and regulations by cities and*  
28 *counties for the protection of the public health, safety and welfare,*  
29 *and is not intended to prevent the enactment or enforcement of*  
30 *additional laws and regulations on the same subject which are not*  
31 *in conflict with the provisions of this act.*

32 *(b) The provisions of this section shall become effective on and*  
33 *after January 1, 1992.*

34 *New Section 2. (a) When used in this act:*

35 *(a) (1) "Base flood" means a flood having a 1% chance of being ✓*  
36 *equaled or exceeded in any one year;*

37 *(b) (2) "floodway fringe" means those portions of a flood plain ✓*  
38 *outside of the boundaries of a regulatory floodway and within stream*  
39 *reaches where such a floodway has been established;*

40 *(c) (3) "flood plain" means land adjacent to a watercourse subject*  
41 *to inundation from a flood having a chance occurrence in any one*  
42 *year of 1%;*

43 *(d) (4) "governing body" means the governing body of a city in*

(1)

(2)

24  
4-1-91  
Attach 7

7-2

1 the case of cities and the board of county commissioners in the case  
2 of counties;

3 (e) ~~(5)~~ "manufactured home" means a structure which:

(3)

4 (1) Is transportable in one or more sections which in the  
5 traveling mode, is 8 body feet or more in width or 40 body  
6 feet or more in length, or when erected on site, is 320 or more  
7 square feet, and designed to be used as a dwelling, with per-  
8 manent foundation, when connected to the required utilities,  
9 and includes the plumbing, heating, air conditioning and elec-  
10 trical systems contained therein; and

11 (2) is subject to the federal manufactured home construction and  
12 safety standards established pursuant to 42 U.S.C. § 5403;

13 (f) ~~(6)~~ "planning commission" means a city, county, regional or  
14 metropolitan planning commission;

(4)

15 (g) ~~(7)~~ "regulatory floodway" means the channel of a river or  
16 other water course and the adjacent land areas that must be reserved  
17 in order to discharge the base flood without cumulatively increasing  
18 the water surface elevation more than designated height;

19 (h) ~~(8)~~ "residential-design manufactured home" means a manufac-  
20 tured home on permanent foundation which has (A) minimum di-  
21 mensions of 22 body feet in width, (B) a pitched roof and (C) siding  
22 and roofing materials which are customarily used on site-built homes;

(5)

23 (i) ~~(9)~~ "subdivision" means the division of a lot, tract or parcel  
24 of land into two or more parts for the purpose, whether immediate  
25 or future, of sale or building development, including resubdivision;

(6)

26 (j) ~~(10)~~ "subdivision regulations" mean the lawfully adopted sub-  
27 division ordinances of a city and the lawfully adopted subdivision  
28 resolutions of a county;

(7)

29 (k) ~~(11)~~ "zoning" means the regulation or restriction of the lo-  
30 cation and uses of buildings and uses of land;

(8)

31 (l) ~~(12)~~ "zoning regulations" mean the lawfully adopted zoning  
32 ordinances of a city and the lawfully adopted zoning resolutions of  
33 a county.

(9)

34 (b) The provisions of this section shall become effective on and  
35 after January 1, 1992.

36 New Sec. 2 3. (a) Before any city adopts a comprehensive plan  
37 or part thereof, subdivision regulations, zoning regulations or build-  
38 ing or setback lines affecting property located outside the corporate  
39 limits of such city, written notice of such proposed action shall be  
40 given to the board of county commissioners of the county in which  
41 such property is located. Such notice also shall be given to the  
township board of the township in which such property is located  
if the township is located in a county not operating under the county

7-3

1 unit road system. Such notice shall be given at least 15 ~~20~~ days  
2 prior to the proposed action.

3 (b) Before any county adopts a comprehensive plan or part  
4 thereof, subdivision regulations, zoning regulations or building or  
5 setback lines affecting property located within three miles of the  
6 corporate limits of a city, written notice of such proposed action  
7 shall be given to the governing body of such city. In any county  
8 not operating under the county unit road system, before any county  
9 adopts a comprehensive plan or part thereof, subdivision regulations  
10 or building or setback lines, written notice of such proposed action  
11 shall be given to the township board of such township in which the  
12 affected property is located. The notice required by this subsection  
13 shall be given at least 15 ~~20~~ days prior to the proposed action.

15

14 (c) *The provisions of this section shall become effective on and*  
15 *after January 1, 1992.*

16 New Sec. 3 4. (a) The governing body of any city, by adoption  
17 of an ordinance, may create a planning commission for such city and  
18 the board of county commissioners of any county, by adoption of a  
19 resolution, may create a planning commission for the county. Any  
20 such planning commission shall be composed of not less than five  
21 members. The number of members of a planning commission may  
22 be determined by ordinance or resolution. If a city planning com-  
23 mission plans, zones or administers subdivision regulations outside  
24 the city limits, *at least two* members of such commission shall reside  
25 outside of but within three miles of the corporate limits of the city,  
26 ~~but the remaining members shall be residents of the city.~~ A  
27 majority of the members of a county planning commission shall reside  
28 outside the corporate limits of any incorporated city in the county.

29 A county, metropolitan or regional planning commission may serve  
30 as the planning commission for a city.

31 (b) The governing body shall provide by ordinance or resolution  
32 for the term of the members of the planning commission and for  
33 the filling of vacancies. Members of the commission shall serve with-  
34 out compensation. The governing body may adopt rules and regu-  
35 lations providing for removal of members of the planning commission.

36 (c) Any two or more cities or counties of this state may cooperate,  
37 pursuant to written agreement, in the exercise and performance of  
38 planning powers, duties and functions. Any city or county of this  
39 state may cooperate, pursuant to written agreement, with any city  
40 or county of any other state having adjoining planning jurisdiction  
41 in the exercise and performance of any planning powers, duties and  
42 functions provided by state law for cities and counties of this state  
43 and to the extent that the laws of such other state permit such joint

7-7

1 cooperation. Any agreement entered pursuant to this subsection shall  
 2 be subject to the provisions of K.S.A. 12-2901 et seq., and amend-  
 3 ments thereto. ~~If such agreement provides for the adoption of a~~  
 4 ~~comprehensive plan, the agreement shall include a provision con-~~  
 5 ~~cerning the approval of the comprehensive plan which is consistent~~  
 6 ~~with the provisions of section 7.~~

did not delete

7 When two or more of such cities or counties, by ordinance of each  
 8 city and by resolutions of the boards of county commissioners enter  
 9 into agreements providing for such joint planning cooperation, there  
 10 shall *may* be established a joint planning commission for the met-  
 11 ropolitan area or region comprising that portion of the areas of plan-  
 12 ning jurisdiction of the cities or counties cooperating jointly as shall  
 13 be designated by the joint ordinances and resolutions. Such a joint  
 14 planning commission for the metropolitan area or region may be  
 15 empowered to carry into effect such provisions of state law relating  
 16 to planning which are authorized for such joining cities or counties  
 17 and which each may under existing laws separately exercise and  
 18 perform.

19 Any city or county, whenever the governing body of the city or  
 20 the board of commissioners of the county deems necessary, may join  
 21 and cooperate in two or more metropolitan area or regional planning  
 22 commissions. Any regional or metropolitan planning commission in  
 23 existence on the effective date of this act shall continue in existence,  
 24 but shall be governed by the provisions of this act.

25 *(d) The provisions of this section shall become effective on and*  
 26 *after January 1, 1992.*

27 New Sec. 4 5. (a) The members of the planning commission  
 28 shall meet at such time and place as may be fixed in the commission's  
 29 bylaws. The commission shall elect one member as chairperson and  
 30 one member as vice-chairperson who shall serve one year and until  
 31 their successors have been elected. A secretary also shall be elected  
 32 who may or may not be a member of the commission. Special  
 33 meetings may be called at any time by the chairperson or in the  
 34 chairperson's absence by the vice-chairperson. The commission shall  
 35 adopt bylaws for the transaction of business and hearing procedures.  
 36 ~~No~~ *Unless otherwise provided by this act, no* action by the planning  
 37 commission shall be taken except by a majority vote of the mem-  
 38 bership thereof. A record of all proceedings of the planning com-  
 39 mission shall be kept. The commission may employ such persons  
 40 deemed necessary and may contract for such services as the com-  
 mission requires. The commission, from time to time, may establish  
 subcommittees, advisory committees or technical committees to ad-  
 vise or assist in the activities of the commission.

1     **(b) The provisions of this section shall become effective on and**  
2 **after January 1, 1992.**

3     New Sec. 5 6. **(a) The governing body shall approve a planning**  
4 **commission budget and make such allowances to the planning com-**  
5 **mission as it deems proper, including funds for the employment of**  
6 **such employees or consultants as the governing body may authorize**  
7 **and provide and shall add the same to the general budget. Prior to**  
8 **the time that moneys are available under the budget, the governing**  
9 **body may appropriate moneys for such purposes from the general**  
10 **fund. The governing body may enter into such contracts as it deems**  
11 **necessary for the purposes of this act and may receive and expend**  
12 **funds and moneys from the state or federal government or from any**  
13 **other source for such purpose purposes.**

14     **(b) The provisions of this section shall become effective on and**  
15 **after January 1, 1992.**

16     New Sec. 6. **(a) A city planning commission is hereby au-**  
17 **thorized to make or cause to be made a comprehensive plan**  
18 **for the development of such city and any unincorporated ter-**  
19 **ritory lying outside of the city but within the same county in**  
20 **which such city is located, which in the opinion of the planning**  
21 **commission, forms the total community of which the city is a**  
22 **part. The city shall notify the board of county commissioners**  
23 **in writing of its intent to extend the planning area into the**  
24 **county. A county planning commission is authorized to make**  
25 **or cause to be made a comprehensive plan for the coordinated**  
26 **development of the county, including references to planning**  
27 **for cities as deemed appropriate. The provisions of this sub-**  
28 **section may be varied through interlocal agreements. Such plan**  
29 **shall include, but not be limited to, provisions regarding land**  
30 **use, transportation, public facilities and natural features.**

31     **(b) The planning commission may approve the recom-**  
32 **mended comprehensive plan as a whole by a single resolution**  
33 **or by successive resolutions may approve parts of the plan.**  
34 **Such resolution shall identify specifically any written presen-**  
35 **tations, maps, plats, charts or other materials made a part of**  
36 **such plan. Before the approval of any such plan or part thereof,**  
37 **the planning commission shall hold a public hearing thereon,**  
38 **notice of which shall be published at least once in the official**  
39 **city newspaper in the case of a city or in the official county**  
40 **newspaper in the case of a county. Such notice shall be pub-**  
41 **lished at least 15 days prior to the date of the hearing. Upon**  
42 **the approval of any such plan or part thereof by adoption of**  
43 **the appropriate resolution by the planning commission, a cer-**



1 tified copy of the plan or part thereof shall be submitted to  
2 the governing body and to all other taxing subdivisions in the  
3 planning area which request a copy of such plan.

4 (c) The governing body, within 60 days after the receipt  
5 thereof, shall consider such proposed plan or part thereof and  
6 submit a statement containing its recommendations regarding  
7 the same to the planning commission. The planning commis-  
8 sion shall reconsider the recommendations of the governing  
9 body and thereafter may adopt such proposed plan or part  
10 thereof as the official plan of the respective city or county. All  
11 reports and documents forming the plan or part thereof as  
12 adopted shall bear the signature of the chairperson and sec-  
13 retary of the planning commission and an attested copy of the  
14 same shall be sent to the respective governing body and to all  
15 other taxing subdivisions in the planning area which request  
16 a copy of such plan. Such plan or part thereof shall constitute  
17 the basis or guide for public action to insure a coordinated and  
18 harmonious development or redevelopment which will best  
19 promote the health, safety, morals, order, convenience, pros-  
20 perity and general welfare as well as wise and efficient ex-  
21 penditure of public funds.

22 (d) At least once each year, the planning commission shall  
23 review or reconsider the plan or any part thereof and may  
24 propose amendments, extensions or additions to the same. The  
25 procedure for the adoption of any such amendment, extension  
26 or addition to any plan or part thereof shall be the same as  
27 that required for the adoption of the original plan or part  
28 thereof. The planning commission shall make a report to the  
2 governing body regarding the plan and any amendments  
30 thereto on or before the date specified in the commission's  
31 bylaws.

32 *New Sec. 7. (a) A city planning commission is hereby authorized*  
33 *to make or cause to be made a comprehensive plan for the devel-*  
34 *opment of such city and any unincorporated territory lying outside*  
35 *of the city but within the same county in which such city is located,*  
36 *which in the opinion of the planning commission, forms the total*  
37 *community of which the city is a part. The city shall notify the*  
38 *board of county commissioners in writing of its intent to extend the*  
39 *planning area into the county. A county planning commission is*  
40 *authorized to make or cause to be made a comprehensive plan for*  
41 *the coordinated development of the county, including references to*  
42 *planning for cities as deemed appropriate. The provisions of this*  
43 *subsection may be varied through interlocal agreements. Such plan*

1 shall include, but not be limited to, provisions regarding land use,  
2 transportation, public facilities and natural features.

3 (b) The planning commission may adopt and amend a compre-  
4 hensive plan as a whole by a single resolution, or by successive  
5 resolutions, the planning commission may adopt or amend parts of  
6 the plan. Such resolution shall identify specifically any written pres-  
7 entations, maps, plats, charts or other materials made a part of  
8 such plan. Before adopting or amending any such plan or part  
9 thereof, the planning commission shall hold a public hearing thereon,  
10 notice of which shall be published at least once in the official city  
11 newspaper in the case of a city or in the official county newspaper  
in the case of a county. Such notice shall be published at least 20

15

12 days prior to the date of the hearing. Upon the adoption or amend-  
13 ment of any such plan or part thereof by adoption of the appropriate  
14 resolution by the planning commission, a certified copy of the plan  
15 or part thereof, together with a written summary of the hearing  
16 thereon, shall be submitted to the governing body. No comprehensive  
17 plan shall be effective unless approved by the governing body as

18 provided by this section. ~~The governing body either may: (1) Approve  
19 such recommendations by ordinance in a city or resolution in a  
20 county; (2) override the planning commission's recommendations by  
21 a 2/3 majority vote; or (3) may return the same to the planning  
22 commission for further consideration, together with a statement spec-  
23 ifying the basis for the governing body's failure to approve or dis-  
24 approve. If the governing body returns the planning commission's  
25 recommendations, the planning commission, after considering the  
26 same, may resubmit its original recommendations giving the reasons  
27 therefor or submit new and amended recommendations. Upon the  
28 receipt of such recommendations, the governing body, by a simple  
29 majority thereof, may adopt or may revise or amend and adopt such  
30 recommendations by the respective ordinance or resolution, or it  
31 need take no further action thereon. If the planning commission fails  
32 to deliver its recommendations to the governing body following the  
33 planning commission's next regular meeting after receipt of the gov-  
34 erning body's report, the governing body shall consider such course  
35 of inaction on the part of the planning commission as a resubmission  
36 of the original recommendations and proceed accordingly. The com-  
37 prehensive plan and any amendments thereto shall become effective  
38 upon publication of the respective adopting ordinance or resolution.~~

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either the governing body or the planning  
commission as provided by an ordinance in a  
city or a resolution in a county

39 (c) An attested copy of the comprehensive plan and any amend-  
40 ments thereto shall be sent to all other taxing subdivisions in the  
41 planning area which request a copy of such plan. Such plan or part  
42 thereof shall constitute the basis or guide for public action to insure  
43

1 *a coordinated and harmonious development or redevelopment which*  
2 *will best promote the health, safety, morals, order, convenience,*  
3 *prosperity and general welfare as well as wise and efficient ex-*  
4 *penditure of public funds.*

5 *(d) At least once each year, the planning commission shall review*  
6 *or reconsider the plan or any part thereof and may propose amend-*  
7 *ments, extensions or additions to the same. The procedure for the*  
8 *adoption of any such amendment, extension or addition to any plan*  
9 *or part thereof shall be the same as that required for the adoption*  
10 *of the original plan or part thereof.*

11 *(e) The provisions of this section shall become effective on and*  
*after January 1, 1992.*

13 New Sec. 7 8. (a) Except as provided in subsection (b), whenever  
14 the planning commission has adopted and certified the comprehen-  
15 sive plan for one or more major sections or functional subdivisions  
16 thereof, no public improvement, public facility or public utility of  
17 a type embraced within the recommendations of the comprehensive  
18 plan or portion thereof shall be constructed without first being sub-  
19 mitted to and being approved by the planning commission as being  
20 in conformity with the plan. If the planning commission does not  
21 make a report within 60 days, the project shall be deemed to have  
22 been approved by the planning commission. If the planning com-  
23 mission finds that any such proposed public improvement, facility  
24 or utility does not conform to the plan, the commission shall submit,  
25 in writing to the governing body, the manner in which such proposed  
26 improvement, facility or utility does not conform. The governing  
27 body may override the plan and the report of the planning com-  
28 mission, and the plan for the area concerned shall be deemed to  
29 have been amended.

30 (b) Whenever the planning commission has reviewed a capital  
31 improvement program and found that a specific public improvement,  
32 public facility or public utility of a type embraced within the rec-  
33 ommendations of the comprehensive plan or portion thereof is in  
34 conformity with such plan, no further approval by the planning  
35 commission is necessary under this section.

36 *(c) The provisions of this section shall become effective on and*  
37 *after January 1, 1992.*

38 New Sec. 8 9. (a) Following adoption of a comprehensive plan,  
39 a city planning commission may adopt and amend regulations gov-  
40 erning the subdivision of land. A city planning commission shall  
41 apply subdivision regulations to all land located within the city and  
42 may apply such regulations to land outside of but within three miles  
43 of the nearest point of the city limits provided such land is within

1 the same county in which the city is located and does not extend  
2 more than 1/2 the distance between such city and another city which  
3 has adopted regulations under this section. A county planning com-  
4 mission may establish subdivision regulations for all or for parts of  
5 the unincorporated areas of the county. Subdivision regulations may  
6 include, *but not be limited to*, provisions for the: (1) Efficient and  
7 orderly location of streets; (2) reduction of vehicular congestion; (3)  
8 reservation or dedication of land for open spaces; (4) off-site and on-  
9 site public improvements; (5) recreational facilities which may in-  
10 clude, but are not limited to, the dedication of land area for park  
11 purposes; (6) flood protection; (7) building lines; (8) compatibility of  
12 design; and (9) any other services, facilities and improvements  
13 deemed appropriate.

14 (b) Subdivision regulations may provide for administrative  
15 changes to *land* elevations designated on a plat. Such regulations  
16 may provide for plat approval conditional upon conformance with  
17 the comprehensive plan. Such regulations may provide for the pay-  
18 ment of a fee in lieu of dedication of land. Such regulations may  
19 provide that in lieu of the completion of any work or improvements  
20 prior to the final approval of the plat, the governing body may accept  
21 a corporate surety bond, cashier's check, escrow account, letter of  
22 credit or other like security in an amount to be fixed by the governing  
23 body and conditioned upon the actual completion of such work or  
24 improvements within a specified period, in accordance with such  
25 regulations, and the governing body may enforce such bond by all  
26 equitable remedies.

27 (c) Before adopting or amending any subdivision regulations, the  
28 planning commission shall call and hold a hearing on such regulations  
29 or amendments thereto. Notice of such hearing shall be published  
30 at least once in the official city newspaper in the case of a city or  
31 in the official county newspaper in the case of a county. Such notice  
32 shall be published at least 15 ~~20~~ days prior to the hearing. Such  
33 notice shall fix the time and place for such hearing and shall describe  
34 such proposal in general terms. In the case of a joint committee on  
35 subdivision regulations, such notice shall be published in the official  
36 city and official county newspapers. The hearing may be adjourned  
37 from time to time and at the conclusion of the same, the planning  
38 commission shall prepare its recommendations and by an affirmative  
39 vote of a majority of the entire membership of the commission adopt  
40 the same in the form of proposed subdivision regulations and shall  
41 submit the same, together with the written summary of the hearing  
42 thereon, to the governing body. The governing body either may: (1)  
43 Approve such recommendations by ordinance in a city or resolution

1 in a county; (2) override the planning commission's recommendations  
2 by a  $\frac{2}{3}$  majority vote; or (3) may return the same to the planning  
3 commission for further consideration, together with a statement spec-  
4 ifying the basis for the governing body's failure to approve or dis-  
5 approve. If the governing body returns the planning commission's  
6 recommendations, the planning commission, after considering the  
7 same, may resubmit its original recommendations giving the reasons  
8 therefor or submit new and amended recommendations. Upon the  
9 receipt of such recommendations, the governing body, *by a simple*  
10 *majority thereof*, may adopt or may revise or amend and adopt such  
11 recommendations by the respective ordinance or resolution, or it  
12 need take no further action thereon. If the planning commission fails  
13 to deliver its recommendations to the governing body following the  
14 planning commission's next regular meeting after receipt of the gov-  
15 erning body's report, the governing body shall consider such course  
16 of inaction on the part of the planning commission as a resubmission  
17 of the original recommendations and proceed accordingly. The pro-  
18 posed subdivision regulations and any amendments thereto shall be-  
19 come effective upon publication of the respective adopting ordinance  
20 or resolution.

21 *(d) The provisions of this section shall become effective on and*  
22 *after January 1, 1992.*

23 New Sec. 9 10. (a) If the governing body of a city proposes to  
24 adopt subdivision regulations affecting property lying outside of the  
25 city and governed by subdivision regulations of the county, a copy  
26 of the city's proposal shall be certified to the board of county com-  
27 missioners or if at any time subsequent to the adoption of regulations  
28 governing the subdivision of land by the city planning commission,  
29 the board of county commissioners shall designate an area for such  
30 purposes which shall include lands lying within the area governed  
31 by subdivision regulations of the city, the board of county commis-  
32 sioners shall certify a copy of such resolution to the governing body  
33 of the city and regulations governing the subdivision of land within  
34 the area designated by the city shall be adopted and administered  
35 in the manner hereinafter provided. Within 60 days after the date  
36 of the certification of the resolution by the board of county com-  
37 missioners or the governing body of the city, there shall be estab-  
38 lished by joint resolution of the board of commissioners and  
39 governing body, a joint committee for subdivision regulation which  
40 shall be composed of three members of the county planning com-  
41 mission to be appointed by the chairperson of the county planning  
42 commission and three members of the city planning commission to  
43 be appointed by the chairperson of the city planning commission

1 and one member to be selected by the other six members. Such  
2 joint committee shall have such authority as provided by law for  
3 county planning and city planning commissions relating to the adop-  
4 tion and administration of regulations governing the subdivision of  
5 land within the area of joint ~~designation~~ *regulation*. Regulations  
6 adopted by the county or city and in effect at the time of the  
7 certification of such resolution by the board of county commissioners  
8 or the governing body of the city shall remain in effect until new  
9 regulations shall have been adopted by the joint committee or for  
10 a period not exceeding six months from and after the date of the  
11 certification of such resolution. The provisions of this section shall  
not apply to any city and county jointly cooperating in the exercise  
13 of planning and zoning under the provisions of this act.

14 *(b) The provisions of this section shall become effective on and*  
15 *after January 1, 1992.*

16 New Sec. ~~10~~ 11. (a) Compliance with subdivision regulations  
17 may be required as the condition of an issuance of a building or  
18 zoning permit when so specified in the subdivision regulations.

19 (b) In conjunction with subdivision or zoning regulations, the  
20 governing body of any city may adopt and enforce building codes  
21 outside the city limits.

22 *(c) The provisions of this section shall become effective on and*  
23 *after January 1, 1992.*

24 New Sec. ~~11~~ 12. (a) The owner or owners of any land located  
25 within an area governed by regulations subdividing the same into  
26 lots and blocks or tracts or parcels, for the purpose of laying out  
27 any subdivisions, suburban lots, building lots, tracts or parcels or  
28 any owner of any land establishing any street, alley, park or other  
29 property intended for public use or for the use of purchasers or  
30 owners of lots, tracts or parcels of land fronting thereon or adjacent  
31 thereto, shall have a plat drawn as may be required by the subdivi-  
32 sion regulations. Such plat shall accurately describe the subdivision,  
33 lots, tracts or parcels of land giving the location and dimensions  
34 thereof ~~or~~ *and* the location and dimensions of all streets, alleys,  
35 parks or other properties intended to be dedicated to public use or  
36 for the use of purchasers or owners of lots, tracts or parcels of land  
37 fronting thereon or adjacent thereto. All plats shall be verified by  
38 the owner or owners thereof. All such plats shall be submitted to  
39 the planning commission or to the joint committee for subdivision  
40 regulation.

41 (b) The planning commission or the joint committee shall de-  
42 termine if the plat conforms to the provisions of the subdivision  
43 regulations. If such determination is not made within 60 days after

1 the first meeting of such commission or committee following the  
2 date of the submission of the plat to the secretary thereof, such plat  
3 shall be deemed to have been approved and a certificate shall be  
4 issued by the secretary of the planning commission or joint com-  
5 mittee upon demand. If the planning commission or joint committee  
6 finds that the plat does not conform to the requirements of the  
7 subdivision regulations, the planning commission or joint committee  
8 shall notify the owner or owners of such fact. If the plat conforms  
9 to the requirements of such regulations, there shall be endorsed  
10 thereon the fact that the plat has been submitted to and approved  
11 by the planning commission or joint committee.

(c) The governing body shall accept or refuse the dedication of  
13 land for public purposes within 30 days after the first meeting of  
14 the governing body following the date of the submission of the plat  
15 to the clerk thereof. The governing body may defer action for an  
16 additional 30 days for the purpose of allowing for modifications to  
17 comply with the requirements established by the governing body.  
18 No additional filing fees shall be assessed during that period. If the  
19 governing body defers or refuses such dedication, it shall advise the  
20 *planning* commission or *joint* committee of the reasons therefor.

(d) The governing body may establish a scale of reasonable fees  
22 to be paid to the secretary of the planning commission or joint  
23 committee by the applicant for approval for each plat filed with the  
24 planning commission or joint committee.

(e) No ~~zoning~~ or building or zoning permit shall be issued for  
26 the use or construction of any structure upon any lot, tract or parcel  
27 of land located within the area governed by the subdivision regu-  
28 lations that has been subdivided, resubdivided or replatted after the  
2 date of the adoption of such regulations by the governing body or  
30 governing bodies but which has not been approved in the manner  
31 provided by this act.

(f) Any regulations adopted by a governing body with reference  
33 to subdividing lots shall provide for the issuance of building permits  
34 on lots divided into not more than two tracts without having to  
35 replat the lot, provided that the resulting tracts shall not again be  
36 divided without replatting. Such regulations shall provide that lots  
37 zoned for industrial purposes may be divided into two or more tracts  
38 without replatting such lot. Such regulations shall contain a proce-  
39 dure for issuance of building or zoning permits on divided lots which  
40 shall take into account the need for adequate street rights-of-way,  
41 easements, improvement of public facilities, and zoning regulations  
4 in existence.

(g) The regulations shall provide for a procedure which specifies  
43

1 a time limit within which action shall be taken, and shall further  
 2 provide, where applicable, for the final decision on the issuance of  
 3 such building permit to be made by the governing body, except as  
 4 may be provided by law.

5 (h) The register of deeds shall not file any plat until such plat  
 6 shall bear the endorsement hereinbefore provided and the land ded-  
 7 icated to for public purposes has been accepted by the governing  
 8 body.

9 (i) *The provisions of this section shall become effective on and*  
 10 *after January 1, 1992.*

11 New Sec. 12 13. (a) The governing body of any city, by adoption  
 12 of an ordinance, and the board of county commissioners of any  
 13 county, by adoption of a resolution, may provide for the adoption  
 14 or amendment of zoning regulations in the manner provided by this  
 15 act. The governing body may divide the territory subject to its  
 16 jurisdiction into districts of such number, shape, area and of such  
 17 different classes, according to the use of land and buildings and the  
 18 intensity of such use, as may be deemed suited to carry out the  
 19 purposes of this act. Such regulations may ~~restrict and regulate~~  
 20 *include, but not be limited to, provisions restricting and regulating*  
 21 *the height, number of stories and size of buildings; the percentage*  
 22 *of lots each lot that may be occupied; the size of yards, courts and*  
 23 *other open spaces; the density of population; the location, use and*  
 24 *appearance of buildings, structures and land for residential, com-*  
 25 *mercial, industrial and other purposes; the conservation of natural*  
 26 *resources, including agricultural land; and the use of land located*  
 27 *in areas designated as flood plains and other uses areas, including*  
 28 *the distance of any buildings and structures from a street or highway.*  
 29 Such regulations shall define the boundaries of zoning districts by  
 30 description contained therein or by setting out such boundaries upon  
 31 a map or maps incorporated and published as part of such regulations  
 32 or by providing for the incorporation by reference in such regulations  
 33 of an official map or maps upon which such boundaries shall be  
 34 fixed. For a county, such map or maps shall be marked "official copy  
 35 of zoning district map incorporated into zoning regulations by adop-  
 36 tion of a resolution of the board of county commissioners on the  
 37 \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_" and filed in the  
 38 office of the county clerk or such other public office as may be  
 39 designated by the board of county commissioners. For a city, such  
 40 map or maps shall be marked "official copy of zoning district map  
 41 incorporated into zoning regulations by adoption of an ordinance  
 42 by the governing body of the city on the \_\_\_\_\_ day of  
 43 \_\_\_\_\_, 19\_\_\_\_" and filed in the office of the city clerk or



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1 such other public office as may be designated by the governing body.  
2 Such regulations and accompanying map or maps shall be public  
3 records.

4 *(b) The provisions of this section shall become effective on and*  
5 *after January 1, 1992.*

6 New Sec. 13 14. (a) The zoning regulations for a county shall  
7 define the area of zoning jurisdiction as all or any portion of the  
8 unincorporated area. The zoning regulations for a city shall define  
9 the zoning jurisdiction as including the area within the city limits  
10 and may also include land located outside the city which is not  
11 currently subject to county zoning regulations and is within three  
12 miles of the city limits, but in no case shall it include land which  
13 is located more than 1/2 the distance to another city. The governing  
14 body of the city shall notify the board of county commissioners in  
15 writing of the city's intention at least 60 days before adopting zoning  
16 regulations affecting such an area outside the city limits.

17 Any flood plain zone or district shall include the flood plain area  
18 within the incorporated area of the city and may include any extra-  
19 territorial jurisdiction lying outside, but within three miles, of the  
20 nearest point on the contiguous city limits when such jurisdiction  
21 has not otherwise been designated a flood plain zone or district by  
22 any other governmental unit or subdivision.

23 *(b) The provisions of this section shall become effective on and*  
24 *after January 1, 1992.*

25 New Sec. 14 15. The governing body may establish flood plain  
26 zones and districts and restrict the use of land therein, including  
27 land devoted to agricultural purposes, and may restrict the appli-  
28 cation thereof to lands, adjacent to watercourses, subject to floods  
29 of a lesser magnitude than that having a chance occurrence in any  
30 one year of 1%. ~~Nothing in this act or any flood plain zoning~~  
31 ~~regulation adopted hereunder shall be construed as affecting~~  
32 ~~the eligibility of any existing structure located within such area~~  
33 ~~for flood insurance under the national flood insurance act.~~

34 New Sec. 15 16. (a) The governing body may adopt zoning reg-  
35 ulations which may include, but not be limited to, provisions which:

- 36 (a) (1) Provide for planned unit developments;
- 37 (b) (2) permit the transfer of development rights;
- 38 (c) (3) preserve structures and districts listed on the local, state  
39 or national historic register;
- 40 (d) (4) control the aesthetics of redevelopment or new  
41 development;
- 42 (e) (5) provide for the issuance of special use or conditional use  
43 permits; and

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1 (f) (6) establish overlay zones.

2 (b) *The provisions of this section shall become effective on and*  
3 *after January 1, 1992.*

4 New Sec. ~~16~~ 17. (a) All resolutions, ordinances and regulations  
5 relating to flood plains shall be submitted to the chief engineer, ~~[of~~  
6 ~~the]~~ division of water resources, Kansas ~~[of the]~~ state board of  
7 agriculture, for review and approval thereby prior to adoption,  
8 and all proposed variances or changes from such approved reso-  
9 lutions, ordinances and regulations shall ~~may~~ be reviewed and  
10 approved by the chief engineer prior to adoption.

and approval thereby prior to adoption

variances or

shall be reviewed and approved by the chief  
engineer prior to adoption

11 (b) The governing body shall submit to the chief engineer of the  
12 division of water resources any ordinance, resolution, regulation or  
13 plan that proposes to create or to effect any change in a flood plain  
14 zone or district, or that proposes to regulate or restrict the location  
15 and use of structures, encroachments, and uses of land within such  
16 an area. Each submission hereunder to the chief engineer shall be  
17 accompanied by complete maps, plans, profiles, specifications, textual  
18 matter, and such other data and information as the chief engineer  
19 may require. The chief engineer shall approve or disapprove ~~may~~  
20 ~~review and comment on~~ any such ordinance, resolution, regulation  
21 or plan or variances or changes thereof within 90 days of the date  
22 of receipt thereof.

shall approve or disapprove

23 (c) *The provisions of this section shall become effective on and*  
24 *after January 1, 1992.*

25 New Sec. ~~17~~ 18. (a) Before any city or county establishes any  
26 zone or district or regulates or restricts the use of buildings or land  
27 therein, the governing body shall require the planning commission  
28 to recommend the nature and number of zones or districts which it  
29 deems necessary and the boundaries of the same and appropriate  
30 regulations or restrictions to be enforced therein. Except as provided  
31 in *the* zoning regulations, all such regulations shall be uniform for  
32 each class or kind of building or land uses throughout each district,  
33 but the regulations in one district may differ from those in other  
34 districts and special uses may be designated within each district with  
35 conditions attached.

36 (b) Upon the development of proposed zoning regulations, the  
37 planning commission shall hold a public hearing thereon. Notice of  
38 such public hearing shall be published at least once in the official  
39 city newspaper in the case of a city or in the official county newspaper  
40 in the case of a county at least ~~15~~ 20 days prior to the date of the  
hearing. In the case of a joint zoning board, notice of such hearing  
shall be published in the official city and official county newspapers.

15

43 Such notice shall fix the time and place for such hearing and shall

1 describe such proposal in general terms. The hearing may be ad-  
2 journed from time to time and at the conclusion of the same, the  
3 planning commission shall prepare its recommendations and by an  
4 affirmative vote of a majority of the entire membership of the com-  
5 mission adopt the same in the form of proposed zoning regulations  
6 and shall submit the same, together with the written summary of  
7 the hearing thereon, to the governing body. The governing body  
8 either may: (1) Approve such recommendations by the adoption of  
9 the same by ordinance in a city or resolution in a county; (2) override  
10 the planning commission's recommendations by a  $\frac{2}{3}$  majority vote  
11 of the membership of the governing body; or (3) may return the  
12 same to the planning commission for further consideration, together  
13 with a statement specifying the basis for the governing body's failure  
14 to approve or disapprove. If the governing body returns the planning  
15 commission's recommendations, the planning commission, after con-  
16 sidering the same, may resubmit its original recommendations giving  
17 the reasons therefor or submit new and amended recommendations.  
18 Upon the receipt of such recommendations, the governing body, *by*  
19 *a simple majority thereof*, may adopt or may revise or amend and  
20 adopt such recommendations by the respective ordinance or reso-  
21 lution, or the governing body need take no further action thereon.  
22 If the planning commission fails to deliver its recommendations to  
23 the governing body following the planning commission's next regular  
24 meeting after receipt of the governing body's report, the governing  
25 body shall consider such course of inaction on the part of the planning  
26 commission as a resubmission of the original recommendations and  
27 proceed accordingly. The proposed zoning regulations and any  
28 amendments thereto shall become effective upon publication of the  
29 respective adopting ordinance or resolution.

30 (c) *The provisions of this section shall become effective on and*  
31 *after January 1, 1992.*

32 New Sec. 18 19. (a) The governing body, from time to time,  
33 may supplement, change or generally revise the boundaries or reg-  
34 ulations contained in zoning regulations by amendment. A proposal  
35 for such amendment may be initiated by the governing body or the  
36 planning commission. If such proposed amendment is not a general  
37 revision of the existing regulations and affects specific property, the  
38 amendment may be initiated by application of the owner of property  
39 affected. Any such amendment, if in accordance with the land use  
40 plan or the land use element of a comprehensive plan, shall be  
41 presumed to be reasonable. The governing body shall establish in  
42 its zoning regulations the matters to be considered when approving  
43 or disapproving a rezoning request. The governing body may estab-

1 lish reasonable fees to be paid in advance by the owner of any  
2 property at the time of making application for a zoning amendment.

3 (b) All such proposed amendments first shall be submitted to the  
4 planning commission for recommendation. The planning commission  
5 shall hold a public hearing thereon, shall cause an accurate written  
6 summary to be made of the proceedings, and shall give notice in  
7 like manner as that required for recommendations on the original  
8 proposed zoning regulations provided in section ~~17~~ 18. Such notice  
9 shall fix the time and place for such hearing and contain a statement  
10 regarding the proposed changes in regulations or restrictions or in  
11 the boundary or classification of any zone or district. If such proposed  
12 amendment is not a general revision of the existing regulations and  
13 affects specific property, the property shall be designated by legal  
14 description or a general description sufficient to identify the property  
15 under consideration. In addition to such publication notice, written  
16 notice of such proposed amendment shall be mailed at least ~~15~~ 20  
17 days before the hearing to all owners of record of lands located  
18 within at least 200 feet of the area proposed to be altered for reg-  
19 ulations of a city and to all owners of record of lands located within  
20 at least 1,000 feet of the area proposed to be altered for regulations  
21 of a county. If a city proposes a zoning amendment to property  
22 located adjacent to or outside the city's limits, the area of notification  
23 of the city's action shall be extended to at least 1,000 feet in the  
24 unincorporated area. Notice of a county's action shall extend 200  
25 feet in those areas where the notification area extends within the  
26 corporate limits of a city. All notices shall include a statement that  
27 a complete legal description is available for public inspection and  
28 shall indicate where such information is available. When the notice  
29 has been properly addressed and deposited in the mail, failure of a  
30 party to receive such notice shall not invalidate any subsequent action  
31 taken by the planning commission or the governing body. Such notice  
32 is sufficient to permit the planning commission to recommend  
33 amendments to zoning regulations which affect only a portion of the  
34 land described in the notice or which give all or any part of the  
35 land described a zoning classification of lesser change than that set  
36 forth in the notice. A recommendation of a zoning classification of  
37 lesser change than that set forth in the notice shall not be valid  
38 without republication and, where necessary, remailing, unless the  
39 planning commission has previously established a table or publication  
40 available to the public which designates what zoning classifications  
41 are lesser changes authorized within the published zoning classifi-  
42 cations. At any public hearing held to consider a proposed rezoning,  
43 an opportunity shall be granted to interested parties to be heard.

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1 (c) Unless otherwise provided by this act, the procedure for the  
2 consideration and adoption of any such proposed amendment shall  
3 be in the same manner as that required for the consideration and  
4 adoption of the original zoning regulations. A majority of the mem-  
5 bers of the planning commission present and voting at the hearing  
6 shall be required to recommend approval or denial of the amendment  
7 to the governing body. If the planning commission fails to make a  
8 recommendation on a rezoning request, the planning commission  
9 shall be deemed to have made a recommendation of disapproval.  
10 When the planning commission submits a recommendation of ap-  
11 proval or disapproval of such amendment and the reasons therefor,  
12 the governing body may: (1) Adopt such recommendation by ordi-  
13 nance in a city or by resolution in a county; (2) override the planning  
14 commission's recommendation by a  $\frac{2}{3}$  majority vote of the mem-  
15 bership of the governing body; or (3) return such recommendation  
16 to the planning commission with a statement specifying the basis for  
17 the governing body's failure to approve or disapprove. If the gov-  
18 erning body returns the planning commission's recommendation, the  
19 planning commission, after considering the same, may resubmit its  
20 original recommendation giving the reasons therefor or submit new  
21 and amended recommendation. Upon the receipt of such recom-  
22 mendation, the governing body, *by a simple majority thereof*, may  
23 adopt or may revise or amend and adopt such recommendation by  
24 the respective ordinance or resolution, or it need take no further  
25 action thereon. If the planning commission fails to deliver its rec-  
26 ommendation to the governing body following the planning com-  
27 mission's next regular meeting after receipt of the governing body's  
28 report, the governing body shall consider such course of inaction on  
29 the part of the planning commission as a resubmission of the original  
30 recommendation and proceed accordingly. The proposed rezoning  
31 shall become effective upon publication of the respective adopting  
32 ordinance or resolution.

33 (d) If such amendment affects the boundaries of any zone or  
34 district, the respective ordinance or resolution shall describe the  
35 boundaries as amended, or if provision is made for the fixing of the  
36 same upon an official map which has been incorporated by reference,  
37 the amending ordinance or resolution shall define the change or the  
38 boundary as amended, shall order the official map to be changed to  
39 reflect such amendment, shall amend the section of the ordinance  
40 or resolution incorporating the same and shall reincorporate such  
41 map as amended.

4 (e) Regardless of whether or not the planning commission ap-  
proves or disapproves a zoning amendment, if a protest petition

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1 against such amendment is filed in the office of the city clerk or the  
 2 county clerk within 14 days after the date of the conclusion of the  
 3 public hearing pursuant to the publication notice, signed by the  
 4 owners of record of 20% or more of any real property proposed to  
 5 be rezoned or by the owners of record of 20% or more of the total  
 6 area required to be notified *by this act* of the proposed rezoning of  
 7 a specific property, *excluding streets and public ways*, the ordinance  
 8 or resolution adopting such amendment shall not be passed except  
 9 by at least a ~~three-fourths~~  $\frac{3}{4}$  vote of all of the members of the  
 10 governing body.

11 (f) Zoning regulations may provide additional notice by providing  
 12 for the posting of signs on land which is the subject of a proposed  
 13 rezoning, for the purpose of providing notice of such proposed  
 14 rezoning.

15 (g) *The provisions of this section shall become effective on and*  
 16 *after January 1, 1992.*

17 New Sec. 19 20. (a) Regulations adopted under authority of this  
 18 act shall not apply to the existing use of any building or land, but  
 19 shall apply to any alteration of a building to provide for a change  
 20 in use or a change in the use of any building or land after the  
 21 effective date of any regulations adopted under this act. If a building  
 22 is damaged by more than 50% of its fair market value such building  
 23 shall not be restored if the use of such building is not in conformance  
 24 with the regulations adopted under this act.

25 (b) Except for flood plain zoning regulations in areas designated  
 26 as a flood plain, regulations adopted by a city pursuant to K.S.A.  
 27 12-715b, and amendments thereto, or a county pursuant to this act  
 28 shall not apply to the use of land for agricultural purposes, nor for  
 29 the erection or maintenance of buildings thereon for such purposes  
 30 so long as such land and buildings are used for agricultural purposes  
 31 and not otherwise. ~~No plat or dedication of such land for public~~  
 32 ~~purposes may be made except as provided by this act.~~

33 New Sec. 20 21. (a) The governing body shall not adopt or  
 34 enforce zoning regulations which have the effect of excluding man-  
 35 ufactured homes ~~from the zoning jurisdiction of the governing body.~~  
 36 ~~The governing body shall not adopt or enforce zoning regulations~~  
 37 ~~which have the effect of excluding residential-design manufactured~~  
 38 ~~homes from single-family residential districts solely because they are~~  
 39 ~~manufactured homes.~~

40 (b) *Nothing in this section shall be construed as precluding the*  
 41 *establishment of architectural or aesthetic standards applicable to*  
 42 *manufactured homes so as to ensure its compatibility with site-built*  
 43 *housing in the same zoning district.*

entire  
 In addition, the

7-20

1 (c) *Nothing in this section shall be construed to preempt or*  
2 *supersede valid restrictive covenants running with the land.*

3 (d) *The provisions of this section shall become effective on and*  
4 *after January 1, 1992.*

5 New Sec. ~~21~~ 22. (a) Any governing body which has enacted a  
6 zoning ordinance or resolution shall create a board of zoning appeals  
7 by adoption of the appropriate ordinance or resolution. Such board  
8 shall consist of not less than three nor more than seven members.  
9 If a city enacts zoning regulations which affect land outside the  
10 corporate limits of such city, at least one member of the board shall  
11 be a resident of the area outside the city's limits. The members first  
12 appointed shall serve respectively for terms of one, two and three  
13 years, divided equally or as nearly equally as possible among the  
14 members. Thereafter the terms of the members may be changed to  
15 either three or four years, whichever is deemed to be in the best  
16 interest of the city or county. Vacancies shall be filled by appointment  
17 for the unexpired terms. The members of such board shall serve  
18 without compensation. The board annually shall elect one of its  
19 members as chairperson, and shall appoint a secretary who may be  
20 an officer or an employee of the city or county. The board shall  
21 adopt rules in accordance with the provisions of the ordinance or  
22 resolution creating the board. Meetings of the board shall be held  
23 at the call of the chairperson and at such other times as the board  
24 may determine. The board shall keep minutes of its proceedings,  
25 showing evidence presented, findings of fact by the board, decisions  
26 of the board and the vote upon each question. Records of all official  
27 actions of the board shall be filed in its office and shall be a public  
28 record. The governing body, in the ordinance or resolution creating  
29 such board, may establish a scale of reasonable fees to be paid in  
30 advance by the party appealing. Any two or more cities or counties  
31 which have established a joint planning commission may establish a  
32 joint board of zoning appeals.

33 (b) Any board of zoning appeals in existence on the effective date  
34 of this act shall continue in existence, but shall be governed by the  
35 provisions of this act.

36 (c) The board of zoning appeals shall administer the details of  
37 appeals from or other matters referred to it regarding the application  
38 of the zoning ordinance or resolution as hereinafter provided. The  
39 board shall fix a reasonable time for the hearing of an appeal or any  
40 other matter referred to it. Notice of the time, place and subject of  
41 such hearing shall be published once in the official city newspaper  
42 in the case of a city and in the official county newspaper in the case  
43 of a county at least 15 ~~20~~ days prior to the date fixed for hearing.

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1 A copy of the notice shall be mailed to each party to the appeal  
2 and to the appropriate planning commission.

3 (d) Appeals to the board of zoning appeals may be taken by any  
4 person aggrieved, or by any officer of the city, county or any gov-  
5 ernmental agency or body affected by any decision of the officer  
6 administering the provisions of the zoning ordinance or resolution.  
7 Such appeal shall be taken within a reasonable time as provided by  
8 the rules of the board, by filing a notice of appeal specifying the  
9 grounds thereof and the payment of the fee required therefor. The  
10 officer from whom the appeal is taken, when notified by the board  
11 or its agent, shall transmit to the board all the papers constituting  
12 the record upon which the action appealed from was taken. The  
13 board shall have power to hear and decide appeals where it is alleged  
14 there is error in any order, requirement, decision or determination  
15 made by an administrative official in the enforcement of the zoning  
16 ordinance or resolution. *In exercising the foregoing powers, the*  
17 *board, in conformity with the provisions of this act, may reverse or*  
18 *affirm, wholly or partly, or may modify the order, requirement,*  
19 *decision, or determination, and to that end shall have all the powers*  
20 *of the officer from whom the appeal is taken, may attach appropriate*  
21 *conditions, and may issue or direct the issuance of a permit.*

22 (e) When deemed necessary by the board of zoning appeals, the  
23 board may grant variances and exceptions from the zoning regulations  
24 on the basis and in the manner hereinafter provided: (1) To authorize  
25 in specific cases a variance from the specific terms of the regulations  
26 which will not be contrary to the public interest and where, due to  
27 special conditions, a literal enforcement of the provisions of the  
28 regulations, in an individual case, results in unnecessary hardship,  
29 and provided that the spirit of the regulations shall be observed,  
30 public safety and welfare secured, and substantial justice done. Such  
31 variance shall not permit any use not permitted by the zoning reg-  
32 ulations in such district. A request for a variance may be granted  
33 in such case, upon a finding by the board that all of the following  
34 conditions have been met: (A) That the variance requested arises  
35 from such condition which is unique to the property in question  
36 and which is not ordinarily found in the same zone or district; and  
37 is not created by an action or actions of the property owner or the  
38 applicant; (B) that the granting of the permit for the variance will  
39 not adversely affect the rights of adjacent property owners or resi-  
40 dents; (C) that the strict application of the provisions of the zoning  
41 regulations of which variance is requested will constitute unnecessary  
42 hardship upon the property owner represented in the application;  
43 (D) that the variance desired will not adversely affect the public



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1 health, safety, morals, order, convenience, prosperity, or general  
2 welfare; and (E) that granting the variance desired will not be op-  
3 posed to the general spirit and intent of the zoning regulations; and  
4 (2) ~~To~~ *to* grant exceptions to the provisions of the zoning regulation  
5 in those instances where the board is specifically authorized to grant  
6 such exceptions and only under the terms of the zoning regulation.  
7 In no event shall exceptions to the provisions of the zoning regulation  
8 be granted where the use or exception contemplated is not specifi-  
9 cally listed as an exception in the zoning regulation. Further, under  
10 no conditions shall the board of zoning appeals have the power to  
11 grant an exception when conditions of this exception, as established  
12 in the zoning regulation by the governing body, are not found to  
13 be present. ~~In exercising the foregoing powers, the board, in~~  
14 ~~conformity with the provisions of this act, may reverse or affirm,~~  
15 ~~wholly or partly, or may modify the order, requirement, de-~~  
16 ~~cision, or determination, and to that end shall have all the~~  
17 ~~powers of the officer from whom the appeal is taken, may attach~~  
18 ~~appropriate conditions, and may issue or direct the issuance of~~  
19 ~~a permit.~~

20 (f) ~~The board may reverse or affirm, wholly or partly, or~~  
21 ~~may modify the order, requirement, decision, or determination,~~  
22 ~~and to that end shall have all the powers of the officer from~~  
23 ~~whom the appeal is taken, may attach appropriate conditions,~~  
24 ~~and may issue or direct the issuance of a permit.~~

25 (f) Any person, official or governmental agency dissatisfied with  
26 any order or determination of the board may bring an action in the  
27 district court of the county to determine the reasonableness of any  
28 such order or determination. Such appeal shall be filed within 30  
29 days of the final decision of the board.

30 (g) A planning commission also may be designated as a board of  
31 zoning appeals under this section.

32 (h) *The provisions of this section shall become effective on and*  
33 *after January 1, 1992.*

34 New Sec. ~~22~~ 23. (a) For the purpose of single-family residential  
35 developments, development rights in such land use shall vest upon  
36 recording of a plat of such land. If construction is not commenced  
37 on such land within five years of recording a plat, the development  
38 rights in such shall expire.

39 (b) For all purposes other than single-family developments, the  
40 right to use land for a particular purpose shall vest upon the issuance  
41 of all permits required for such use by a city or county and con-  
42 struction has begun ~~or~~ *and* substantial amounts of work have been  
43 completed under a validly issued permit.

1 (c) The governing body may provide in zoning regulations for  
 2 earlier vesting of development rights, however, vesting shall occur  
 3 in the same manner for all uses of land within a land-use classification  
 4 under the adopted zoning regulations.

5 (d) *The provisions of this section shall become effective on and*  
 6 *after January 1, 1992.*

7 New Sec. 23 24. (a) Whenever any city or county has as a part  
 8 of a comprehensive plan adopted a plan for its major street or high-  
 9 way system, after consultation with the secretary of transportation  
 10 and the county engineer and any planning commission of the county  
 11 or counties within which such system lies, the governing body is  
 12 hereby authorized and empowered, to establish by the appropriate  
 13 ordinance or resolution building or setback lines on such existing  
 14 and proposed major streets or highways and to prohibit any new  
 15 building being located within such building or setback lines on prop-  
 16 erty within the plat approval jurisdiction of the city. Such ordinance  
 17 or resolution may incorporate by reference an official map, which  
 18 may include supplementary documents, setting forth such plan which  
 19 shall show with reasonable survey accuracy the location and width  
 20 of existing or proposed major streets or highways and any building  
 21 or setback lines. The governing body shall provide for the method  
 22 by which this section shall be enforced. Such official map shall not  
 23 be enforced until after a certified copy of such map and adopting  
 24 ordinance *or resolution* has been filed with the register of deeds of  
 25 the county or counties in which such system lies. The board of  
 26 zoning appeals shall have the power to modify or vary the building  
 27 restrictions herein authorized in specific cases, in order that un-  
 28 warranted hardship, which constitutes a complete deprivation of use  
 29 as distinguished from merely granting a privilege, may be avoided,  
 30 yet the intended purpose of the regulations shall be strictly observed  
 31 and the public welfare and public safety protected. The setback  
 32 ordinance *resolution* or official map shall not be adopted, changed  
 33 or amended by the governing body until a public hearing has been  
 34 held thereon by the governing body. A notice of the time and place  
 35 of such hearing shall be published in the official city newspaper *in*  
 36 *the case of a city or the official county newspaper in the case of a*  
 37 *county*. Such notice shall be published at least 15 ~~20~~ days prior to  
 38 the date of the hearing. The powers of this section shall not be  
 39 exercised so as to deprive the owner of any existing property or of  
 40 its use or maintenance for the purpose to which such property is  
 then lawfully devoted.

15

41 (b) *The provisions of this section shall become effective on and*  
 42 *after January 1, 1992.*

7-24

1 New Sec. 24 25. (a) Within 30 days of the final decision of the  
2 city or county, any person aggrieved thereby may maintain an action  
3 in the district court of the county to determine the reasonableness  
4 of such final decision.

5 (b) *The provisions of this section shall become effective on and*  
6 *after January 1, 1992.*

7 New Sec. 25 26. (a) Any violation of any regulation adopted  
8 under the authority of this act shall be a misdemeanor and shall be  
9 punishable by a fine of not to exceed \$500 or by imprisonment for  
10 not more than six months for each offense or by both such fine and  
11 imprisonment. Each day's violation shall constitute a separate offense.

12 (b) Any city or county, and any person the value or use of whose  
13 property is or may be affected by such violation, shall have the  
14 authority to maintain suits or actions in any court of competent  
15 jurisdiction to enforce the adopted zoning regulations and to abate  
16 nuisances maintained in violation thereof.

17 (c) Whenever any building or structure is or is proposed to be  
18 erected, constructed, altered, converted or maintained or any build-  
19 ing, structure or land is or is proposed to be, used in violation of  
20 any zoning regulations, the city or county, or in the event the  
21 violation relates to a provision concerning flood plain zoning, the  
22 attorney general and the chief engineer of the division of water  
23 resources of the Kansas state board of agriculture, in addition to  
24 other remedies, may institute injunction, mandamus, or other ap-  
25 propriate action or proceeding to prevent such unlawful erection,  
26 construction, reconstruction, alteration, conversion, maintenance or  
27 use or to correct or abate such violation or to prevent the occupancy  
28 of such building, structure or land.

(d) Any person, company, corporation, institution, municipality  
30 or agency of the state or ~~federal government~~ who violates any  
31 provision of any regulation relating to flood plain zoning shall be  
32 subject to the penalties and remedies provided for herein.

33 (e) *The provisions of this section shall become effective on and*  
34 *after January 1, 1992.*

35 New Sec. 27. *The governing body of any city or county in areas*  
36 *designated as a flood plain shall not authorize, pursuant to its build-*  
37 *ing codes, the construction, reconstruction or renovation of any*  
38 *building, facility or structure which does not comply with the min-*  
39 *imum requirements of the national flood insurance act<sup>1</sup> or any rules*  
40 *and regulations adopted pursuant thereto.*

41 New Sec. 26 28. (a) Any comprehensive plan or part thereof,  
42 subdivision regulations, zoning regulations or building or setback  
43 lines adopted by the governing body or planning commission of any

of 1963, as amended, (42 U.S.C. §4001 et seq.)

7-25

and which are consistent with the provisions of this act

city adopted prior to the effective date of this act shall continue in force and effect the same as though adopted under the provisions of this act, until the same is modified or a new comprehensive plan or part thereof, subdivision regulations or building or setback lines are adopted as provided in this act.

(b) The provisions of this section shall become effective on and after January 1, 1992.

Sec. 27. K.S.A. 1000 Supp. 10-101a is hereby amended to read as follows: 10-101a. (a) The board of county commissioners may transact all county business and perform all powers of local legislation and administration it deems appropriate, subject only to the following limitations, restrictions or prohibitions: (1) Counties shall be subject to all acts of the legislature which apply uniformly to all counties.

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

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

(4) Counties shall be subject to acts of the legislature prescribing limits of indebtedness.

(5) In the exercise of powers of local legislation and administration authorized under provisions of this section, the home rule power conferred on cities to determine their local affairs and government shall not be superseded or impaired without the consent of the governing body of each city within a county which may be affected.

(6) Counties may not legislate on social welfare administered under state law enacted pursuant to or in conformity with public law No. 27174th congress, or amendments thereof.

(7) Counties shall be subject to all acts of the legislature concerning elections, election commissioners and officers and their duties as such officers and the election of county officers.

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

(9) Counties may not exempt from or effect changes in statutes made nonuniform in application solely by reason of authorizing exceptions for counties having adopted a charter for county government.

(10) No county may levy ad valorem taxes under the authority of this section upon real property located within any redevelopment area established under the authority of K.S.A. 12-1772, and amendments thereto, unless the resolution authorizing the same specifically authorized a portion of the pro-

1 ceeds of such levy to be used to pay the principal of and  
2 interest upon bonds issued by a city under the authority of  
3 K.S.A. 12-1774, and amendments thereto.

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

12 (12) Counties may not exempt from or effect changes in the  
13 provisions of K.S.A. 10-4601 to 10-4625, inclusive, and amend-  
14 ments thereto.

15 (13) Except as otherwise specifically authorized by K.S.A.  
16 12-1,101 to 12-1,109, inclusive, and amendments thereto, coun-  
17 ties may not levy and collect taxes on incomes from whatever  
18 source derived.

19 (14) Counties may not exempt from or effect changes in  
20 K.S.A. 10-430, and amendments thereto. Any charter resolution  
21 adopted by a county prior to July 1, 1983, exempting from or  
22 effecting changes in K.S.A. 10-430, and amendments thereto,  
23 is null and void.

24 (15) Counties may not exempt from or effect changes in  
25 K.S.A. 10-302, 10-502b, 10-503, 10-805 or 10-1202, and amend-  
26 ments thereto.

27 (16) Counties may not exempt from or effect changes in  
28 K.S.A. 13-13a26, and amendments thereto. Any charter reso-  
29 lution adopted by a county, prior to the effective date of this  
30 act, exempting from or effecting changes in K.S.A. 13-13a26,  
31 and amendments thereto, is null and void.

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

37 (18) Counties may not exempt from or effect changes in  
38 K.S.A. 10-15,130, 10-15,140 and 10-15,141, and amendments  
39 thereto. Any charter resolution adopted by a county prior to  
40 the effective date of this act, exempting from or effecting  
changes in such sections is null and void.

41 (19) Counties may not exempt from or effect changes in the  
42 provisions of K.S.A. 12-1223, 12-1225 and 12-1226 and K.S.A.  
43

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1 1900 Supp. 12-1225a, 12-1225b and 12-1225c, and amendments  
2 thereto.

3 (20) Counties may not exempt from or effect changes in the  
4 provisions of K.S.A. 10-211, and amendments thereto.

5 (21) Counties may not exempt from or effect changes in the  
6 provisions of K.S.A. 10-4001 to 10-4015, inclusive, and amend-  
7 ments thereto.

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

18 (23) Counties may not exempt from or effect changes in  
19 K.S.A. 10-2020, and amendments thereto ~~10-2050 to 10-2066,~~  
20 ~~inclusive, and sections 1 to 25, inclusive.~~

21 (24) Counties may not exempt from or effect changes in  
22 K.S.A. 70-41a04, and amendments thereto.

23 (b) Counties shall apply the powers of local legislation  
24 granted in subsection (a) by resolution of the board of county  
25 commissioners. If no statutory authority exists for such local  
26 legislation other than that set forth in subsection (a) and the  
27 local legislation proposed under the authority of such subsec-  
28 tion is not contrary to any act of the legislature, such local  
29 legislation shall become effective upon passage of a resolution  
30 of the board and publication in the official county newspaper.  
31 If the legislation proposed by the board under authority of  
32 subsection (a) is contrary to an act of the legislature which is  
33 applicable to the particular county but not uniformly applicable  
34 to all counties, such legislation shall become effective by pas-  
35 sage of a charter resolution in the manner provided in K.S.A.  
36 10-101b, and amendments thereto.

37 ~~Sec. 28. 29. On and after January 1, 1992, K.S.A. 24-126 is~~ ✓  
38 hereby amended to read as follows: 24-126. It shall be unlawful for  
39 any person, corporation, drainage or levee district, county, city, town  
40 or township, without first obtaining the approval of plans for the  
41 same by the chief engineer of the division of water resources, to  
42 construct, cause to be constructed, maintain or cause to be main-  
43 tained, any levee or other such improvement on, along or near any

1 ~~stream of this state which is subject to floods, freshets or overflows,~~  
2 so as to control, regulate or otherwise change the flood waters of  
3 such stream; ~~and~~ Any person, corporation, county, city, ~~town,~~  
4 township or district violating any provision of this act shall be deemed  
5 guilty of a misdemeanor, and upon conviction shall be punished by  
6 a fine of not less than \$100 nor more than \$1,000, or by imprisonment  
7 in the county jail for a period of not more than one year, or by  
8 both such fine and imprisonment; ~~and~~ Each day any structure is  
9 maintained or caused to be maintained shall constitute a separate  
10 offense.

11 Plans submitted for approval shall include maps, profiles, cross  
12 sections, data and information as to the effect upon upstream and  
13 downstream areas resulting from the proposed levee or other such  
14 improvement and such other data and information as the chief en-  
15 gineer of the division of water resources may require. If the chief  
16 engineer finds from an examination of such plans and pertinent  
17 information that the construction of the proposed levee or other such  
18 improvement is feasible and not adverse to the public interest, the  
19 chief engineer shall approve the same. In determining whether or  
20 not the construction of any proposed levee or other such improve-  
21 ment designed so as to reduce flood risks to a chance of occurrence  
22 in any one year of 1% or less is adverse to the public interest, the  
23 chief engineer shall consider the following: (1) The effect upon areas  
24 downstream or upstream as a result of the construction of such  
25 proposed levee or other such improvement; and (2) the effect of  
26 the proposed levee or other such improvement and any other existing  
27 or proposed levees or other such improvements upon downstream  
28 and upstream areas. In the event any such levee or other such  
29 improvement is about to be constructed, is constructed or maintained  
30 by any person, corporation, county, city, ~~town,~~ township or district  
31 without approval of plans by the chief engineer, it shall be the duty  
32 of the attorney general, to file suit in a court of competent juris-  
33 diction, to enjoin the construction or maintenance of such levee or  
34 other such improvement. Prior to the adoption of a general plan of  
35 drainage and flood protection, as provided in K.S.A. 24-901, ~~and~~  
36 *amendments thereto*, and the commencement of construction in car-  
37 rying such plan into effect, the chief engineer of the division of water  
38 resources may give temporary approval for the repair and mainte-  
39 nance of any levee or other drainage work in existence on May 28,  
40 1929; ~~but~~ Such approval for such temporary repair and maintenance  
41 shall be without prejudice to withdrawal of such approval when a  
42 general plan shall be adopted. Nothing contained in this section shall  
43 apply to any drainage district heretofore organized under K.S.A. 24-

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1 ~~401 et seq., and amendments thereto, and having therein property~~ ✓  
 2 of an assessed valuation of \$50,000,000 or more. ~~The provisions of~~  
 3 ~~this section shall not apply to properly placed fills other than levees~~  
 4 ~~located in the floodway fringe within a participating community as~~  
 5 ~~defined and identified by the national flood insurance act.~~ The chief  
 6 engineer shall adopt such rules and regulations deemed necessary  
 7 ~~to administer and enforce the provisions of this section.~~

29

8 ~~Sec. 30.~~ K.S.A. 19-2908 and 19-2921 are hereby repealed.

30

9 ~~Sec. 29. 31.~~ On and after January 1, 1992, K.S.A. 12-701 to  
 10 12-704, inclusive, 12-704a, 12-705, 12-705a, 12-705b, 12-705c, 12-  
 11 706, 12-706a, 12-707 to 12-715, inclusive, 12-715a, 12-717 to 12-735,  
 12 inclusive, 19-2901, 19-2902, 19-2902a, 19-2902b, 19-2902c, 19-2903,  
 13 19-2904, 19-2905, 19-2905a, 19-2906, 19-2907, 19-2909 to 19-2914,  
 14 inclusive, 19-2916, 19-2916a, 19-2918, 19-2918a, 19-2918b, 19-2918c,  
 15 19-2919, ~~19-2921~~, 19-2924, 19-2925, 19-2925a, 19-2926, 19-2926a,  
 16 19-2926b, 19-2927 to 19-2934, inclusive, 19-2934a, 19-2935 to 19-  
 17 2938, inclusive, ~~24-126~~ and K.S.A. 1990 Supp. 12-716, ~~19-101a~~, 19- ✓  
 18 2915 and 19-2920 are hereby repealed.

31

19 ~~Sec. 30 32.~~ This act shall take effect and be in force from and  
 20 after January 1, 1992, and its publication in the statute book.