

Approved March 26, 1991
Date

MINUTES OF THE Senate COMMITTEE ON Economic Development

The meeting was called to order by Senator Dave Kerr at
Chairperson

8:00 a.m. ~~XXX~~ on March 21, 1991 in room 123-S of the Capitol.

All members were present ~~XXXX~~:

Committee staff present:

Bill Edds, Revisor of Statutes' Office
Lynne Holt, Legislative Research Department
LaVonne Mumert, Committee Secretary

Conferees appearing before the committee:

Rodney Geisler, Bureau of Water, Department of Health and Environment
Joe L. Norton, Stinson, Mag & Fizzell, Attorneys

Senator Dave Kerr, Chairman, called the meeting to order.

HB 2493 - Kansas water pollution control revolving fund, loans construed to be bonds for certain purposes

Rodney Geisler provided written testimony in support of HB 2493 (Attachment 1). He explained that the bill would provide technical correction to the existing Water Pollution Control Revolving Fund statute. HB 2493 clarifies that the loans to municipalities from the funds can be considered the same as bonds with regard to the cash-basis and aggregate tax levy limitation law. He said the bill would simplify the program for the municipalities as well as the costs of administering the program for the Kansas Development Finance Authority (KDFA) and the Department of Health and Environment (KDHE).

Joe Norton supplied written testimony in support of the bill (Attachment 2). He told the Committee his law firm acts as bond counsel to the KDFA and KDHE. Mr. Norton explained the background and origination of the fund and how the bill would clarify the current law pertaining to the fund.

Senator Moran moved that HB 2493 be recommended favorably for passage. Senator Vidricksen seconded the motion, and the motion carried.

SB 29 - Income tax credits and sales tax exemption for location of business in enterprise zone repealed

Senator Moran explained the subcommittee report on SB 29 (Attachment 3). He said the subcommittee recommends that the portion of SB 29 which eliminates the enhanced tax advantage be deleted but that those benefits be restricted in two ways: 1) the local community be required to make a contribution to the proposed project which would equal at least one-third of the amount of the property taxes if fully abated; and 2) in order for an applicant to be eligible to receive sales and income tax credits, they must qualify as a "basic industry". Senator Moran said the goal of the provision requiring a local contribution is to require the local officials granting the exemption to "have a stake" in the decision and thereby to more carefully scrutinize the proposal. He noted that the requirement that a business meet the definition of a basic industry would probably exclude all retail businesses. The down side of this provision would be limiting the benefits to retail businesses in a downtown area. Senator Moran said the subcommittee is uncertain to what extent the enterprise zone benefits are being utilized by those types of businesses. He said the subcommittee further recommends that the joint Committee on Economic Development consider this topic and the possibility of creating separate qualifications for businesses located in a central business district, along with the further recommendation that the enterprise zone criteria be studied in the interim. Chairman Kerr noted that the subcommittee discussed the fact that it is possible to determine

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

CONTINUATION SHEET

MINUTES OF THE Senate COMMITTEE ON Economic Development,
room 123-S, Statehouse, at 8:00 ~~am~~ XX/p.m. on March 21, 1991

one-third of the value of a property because any property will have some type of valuation assigned to it. He said that an official of the city would file a signed document with the Department of Revenue. No audit or verification by the Department would be required. During discussion of the types of local contributions that would qualify, Senator Moran noted that police and fire protection would not meet the requirement since they are the types of services the city provides to everyone. Senator Francisco asked whether a city would be able to abate a third of the property taxes and then have an lieu of agreement and still qualify for the enterprise zone benefits. Subcommittee members said it is not their intent to allow that type of situation, and it is their purpose that the local entities have a meaningful commitment of their own resources. Senator Salisbury stated that she would support provisions requiring that the statement signed by a city official regarding the one-third contribution must specify exactly what the contribution consists of. Senator Salisbury also mentioned that perhaps the Department of Revenue should be instructed to develop guidelines for communities with regard to the local contribution requirement.

There was discussion about not-for-profit organizations not being eligible for enterprise zone benefits because of the requirement that a business must qualify for income tax in order to be eligible for the sales tax benefit. Mention was made of training funds, such as Kansas Industrial Training and the Job Training Partnership Act, and it was agreed that these types of funds would not qualify as the one-third contribution. It was also noted that the Department of Commerce issues guidelines for the enterprise zone benefits, rather than rules and regulations.

Chairman Kerr asked if any member of the audience wished to speak on the subcommittee proposals. Mary Ellen Conlee (Kansas Association for Small Business) expressed concern that if a business is not a manufacturer, wholesale warehouse or engaged in research and development, the local taxing authority could not grant them a property tax abatement. She noted that in blighted areas, other types of contributions, such as water, sewer, highways, etc., would not be needed and that the property tax abatement might be the only possible contribution which would be beneficial to the business. Ms. Conlee also said that Wichita requires a minimum investment of \$50,000 before a project can be considered for property tax abatement and many expansions would not qualify for that minimum. Senator Winter noted that abatement is possible with the issuance of Industrial Revenue Bonds. Ms. Conlee said that IRB's are not an effective tool unless the expansion is at least \$2 million. She also questioned whether the one-third contribution would be one-third a year or a single one-third contribution. Committee members indicated it would be each year for ten years.

Senator Winter stated that the Kansas Industrial Developers Association had responded in a positive way to the subcommittee proposals. Senator Francisco mentioned the possibility of including a requirement relating to full-time employees as part of the qualifications for eligibility. It was agreed that the Committee would consider a balloon of SB 29 with the subcommittee proposals included at a later meeting.

Senator McClure moved that the minutes of the March 20, 1991 meeting be approved. Senator Moran seconded the motion, and the motion carried.

The meeting adjourned at 9:00. The next meeting of the Committee will be Tuesday, March 26, 1991.

Testimony presented to
Senate Committee on Economic Development

by

The Kansas Department of Health and Environment

House Bill 2493

H.B. 2493 will provide technical correction to the existing Kansas Water Pollution Control Revolving Fund enabling legislation. KDHE supports the bill.

The Kansas Water Pollution Control Revolving Fund (Fund) was established to receive Capitalization Grants from the Environmental Protection Agency under the Clean Water Act. States match the federal dollars with a minimum 20% "state match." The total amount in the fund is then used for low interest loans to municipalities for water pollution control projects. Projects can include municipal wastewater treatment plants and collection systems.

The Fund was established by statute in 1989. To provide the necessary 20% "State Match", KDHE pursued the option of issuing revenue bonds with the Kansas Development Finance Authority. In developing the necessary program and revenue bonding effort, KDHE and KDFA also employed financial advisors and bond counsel.

The Fund was developed considering existing municipal financing statutes, including the "Cash-Basis Law" (K.S.A. 10-1116). In our opinion, the intent of the original legislation establishing the Fund was for the loans considered the same as bonds. However, the lack of specific language stating the loan can be considered the same as a bond has raised questions regarding authority which we would like to clarify.

Presently, to get around the problem, we have been issuing several series of small temporary notes on each individual project. The overhead associated with this can be avoided if this amendment is adopted. The amendment will clarify that SRF loans are the same as bonds with respect to the cash-basis law. Therefore, the bill will greatly simplify the SRF program for municipalities. The amendment will reduce costs for KDHE and KDFA's administration of the program and the costs to locals.

The second item concerns "tax levies exempt from aggregate limitation" (K.S.A. 79-5028). This technical correction also clarifies a loan from the Fund is a "State infrastructure loan" as referenced in K.S.A. 79-5028.

Testimony presented by: Rodney Geisler
Chief, Municipal Programs Section
Bureau of Water, Division of Environment
March 21, 1991

Attachment 1
3/21/91
Sen. Eco. Devel.

STINSON, MAG & FIZZELL
(GILMORE & BELL)

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March 19, 1991

Senator Dave Kerr
Chairperson
Senate Committee on Economic Development
State Capitol
Topeka, KS 66612

Re: House Bill No. 2493

Dear Senator Kerr:

On Thursday, March 21, 1991 the Senate Committee on Economic Development (the "Committee") will conduct a hearing on House Bill No. 2493 (the "Bill"). As Bond Counsel to the Kansas Development Finance Authority ("KDFA") and the State Department of Health and Environment ("KDHE") we have been requested to provide information to the Committee regarding the Bill.

For many years the United States Environmental Protection Agency (the "EPA") provided funds to KDHE which were in turn granted to various municipalities in the State of Kansas to assist in financing water pollution control facilities (the "facilities"). Congressional amendments to the authorizing federal act eliminated the grant program and instituted a loan program for municipalities to be administered by the states. As a result of the federal action, the Legislature adopted K.S.A. 65-3321 et seq. (the "Act") in 1988 to establish the Kansas Water Pollution Control Revolving Fund (the "SRF"). The SRF is administered by KDHE to provide funds to finance the facilities. KDFA has arranged financing for the state match funds necessary to implement the program. The Act authorizes Kansas municipalities to enter into long-term loan agreements (the "Loans") with KDHE to repay the funds advanced by KDHE. The amount of the Loans are not included within the municipalities' bonded indebtedness limitations. The Loans may be repayed from several dedicated sources of revenue, including tax levies. KDHE is also permitted to attach a municipality's share of the local ad valorem tax reduction fund to insure repayment of the Loan. Since tax revenues may be utilized to

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Sen. Eco. Devel.

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repay the Loans, a technical legal question has arisen with respect to treatment of the Loans for purposes of the cash-basis and aggregate tax levy limitation laws. The decision of the Kansas Supreme Court in the case of Blevins vs. Douglas County, et al. ("Blevins") also questioned a municipality's ability to utilize its home rule powers to make necessary levies to repay Loans.

The Bill proposes to amend one section of the Act (K.S.A. 65-3327) to clarify that the Loans shall be construed to be "bonds" for purposes of K.S.A. 10-1116 and 79-5028. A provision of the original Bill stating that any taxes levied to repay the Loan shall be levied and administered in the same as taxes levied to repay general obligations of such municipality was stricken by the House Committee on Economic Development.

The undersigned appreciates the opportunity to appear before the Committee. Should you or any other Committee members or staff have any questions concerning this matter, please feel free to contact the undersigned.

Very truly yours,

STINSON, MAG & FIZZELLE


Joe L. Norton

JLN:rrb

cc KDHE
KDFA

3/21/91
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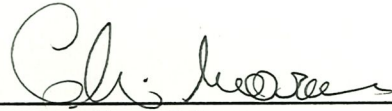
SUBCOMMITTEE REPORT

The Senate Subcommittee on S.B. 29 recommends to the Senate Committee on Economic Development that 1991 S.B. 29 be recommended favorably with the following amendments:

1. As a precondition for being granted a sales tax exemption pursuant to K.S.A. 79-3606 (ee), a taxpayer must demonstrate that a community has committed itself to providing local incentives to a qualified business located within an enterprise zone. Those incentives may be either property tax abatements in an amount of 33 percent of taxes for a period of ten years otherwise owed by a business or some other benefit of equivalent value. The Subcommittee notes that local incentives may include, but are not limited to, property tax abatements, training assistance, and infrastructure improvements. The intent of this recommendation is to exact greater commitment from communities in providing local assistance to recipients of state tax incentives under the Kansas Enterprise Zone Act.
2. Under current law, eligible taxpayers who invest in qualified businesses located in enterprise zones may receive sales tax exemptions (K.S.A. 79-3606 (ee)) and the job expansion and investment credit (K.S.A. 79-32,153). The Subcommittee recommends that such incentives only be granted to a taxpayer for investments in a qualified business located within an enterprise zone which satisfies the definition of "Kansas basic industry" in K.S.A. 74-5056 (Kansas Partnership Fund). The intent of this recommendation is to ensure that recipients of state tax benefits are basic to the state's economic structure and have the greatest potential for effecting economic growth.

In its deliberations on enterprise zones, the Subcommittee recognized that different criteria for incentives might be appropriate for businesses, including retail businesses, located in enterprise zones within downtown business districts. However, due to time constraints, the Subcommittee was unable to really explore that option. Therefore, the Subcommittee recommends that the 1991 Joint Committee on Economic Development consider this option further.

Finally, the Subcommittee recommends for interim review the criteria for enterprise zone designation.



Senator Jerry Moran
Subcommittee Chairman



Senator Bill Brady



Senator Marge Petty



Senator Wint Winter, Jr.