Approved February 6, 1991
Date

MINUTES OF THE SENATE COMMITTEE ON LOCAL GOVERNMENT.

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

9:00 a.m./~~p.m.~~ XXX on February 5, 1991 in room 531-N of the Capitol.

All members were present except:

Committee staff present:

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

Conferees appearing before the committee:

Anne Smith, Kansas Association of Counties
Jim Kaup, League of Kansas Municipalities
Nancy Shontz, The League of Women Voters of Lawrence-Douglas County
Jerry Hazlett, Kansas Wildlife Federation, Inc.
George Austin, Division of Water Resources, Kansas State Board of Agriculture
Judee Johnsen, Indian Hills Neighborhood Association

Continued hearing on SB 23 - Concernng Planning and Zoning.

Anne Smith, Kansas Association of Counties, testified in support of the bill but expressed some concerns. (Attachment 1). The Chairman asked Ms. Smith her opinion of the suggested language submitted by the Kansas Manufactured Housing Association at a previous meeting. Ms. Smith said her organization's attorney is continuing to work on it.

Jim Kaup, League of Kansas Municipalities, followed with testimony in support of SB 23 with an amendment. (Attachment 2). He added, in answer to the previous testimony of Michael Shultz of the University of Missouri regarding group homes, that for the record, the League opposes the insertion of anything in the bill dealing with group homes. Mr. Kaup does not believe that the state law conflicts with federal law in this regard. He noted that although some Attorney Generals in some states have ruled that there is a conflict, there are several states in which Attorney Generals have concluded that there is no conflict.

Sen. Daniels asked Mr. Kaup for his opinion on final approval of comprehensive plans. Mr. Kaup noted that although this is not in the bill, he agrees with Sen. Daniels that local elected officials should make the decisions, not an appointed board.

With regard to manufactured housing, Sen. Gaines asked Mr. Kaup to draw up a page of information for the committee members which reflects the policy of the American Planning Association as an alternative to Mr. Kaup's amendment. Mr. Kaup agreed to have the information ready for tomorrow's meeting.

Sen. Allen began a short discussion regarding the application of the same rules for manufactured housing to cities as to counties.

Sen. Daniels asked Mr. Kaup for his opinion regarding the number of days allowed for notification, 15 or 20. Mr. Kaup said the intent of the bill was to make the time uniform between counties and cities, however, if the 15 days in the bill is an issue, he has no objection to changing it to 20 days.

Nancy Shontz, The League of Women Voters of Lawrence-Douglas County, testified

in opposition to four proposed amendments to the bill and called the committee's attention to written testimony of Gordon Bower of the Lawrence Association of Neighborhoods. (Attachments 3 and 4). When asked her opinion of how many days of notice should be included in the bill, Ms. Shontz stated that it should be left as it was at 20 days.

Jerry Hazlett, Kansas Wildlife Federation, Inc., testified in opposition to lines 35-38 of SB 23. (Attachment 5). Ms. Kiernan asked Mr. Hazlett for a definition of "properly placed fills." Mr. Hazlett declined to answer this specifically because he was not certain but felt Mr. Austin of the Division of Water Resources could answer better.

George Austin, Division of Water Resources, Kansas State Board of Agriculture, followed with his testimony in support of the bill if it is amended. (Attachment 6). With regard to the meaning of "properly placed fills", he explained that this phrase refers to meeting the FEMA regulations as far as the space level.

Final testimony was given by Judee Johnsen, Indian Hills Neighborhood Association, in support of the bill if amended. (Attachment 7).

Sen. Gaines raised a question regarding the liability of run off within cities. Mike Heim will research and report on this at the next meeting.

Other written testimony had been distributed which was submitted by those who were not able to appear before the committee. (Attachments 8, 9, and 10).

The minutes of January 31 were approved.

The meeting was adjourned at 10:00 a.m.

Date: 2-5-91

GUEST REGISTER

SENATE

LOCAL GOVERNMENT

NAME	ORGANIZATION	ADDRESS
JUDEE JOHNSEN	INDIAN HILLS NEIGHBORHOOD ASSN., LAWRENCE	806 W. 29TH ST. LAWRENCE 66046
Nancy K Shontz	League of Women Voters Lawrence - Do County	Lawrence
Karl Muldener	KDOE	Topeka
Art Davis	City of Lenexa	Lenexa, KS
John Henderson	Div. Water Res. KSBA	Topeka, KS.
GEORGE AUSTIN	"	"
Willie Martin	Sedgwick Co	Wichita
GERRY RAY	Johnson Co	Olathe
Nick Alexander	Gov's Office	Topeka
Anne Smith	Ks. Assoc. of Counties	Topeka
PAT REED	JFC Plnng Com	RT 3 Topeka
Keith Watts Hall	Leg. Intern	Wichita
Carol Walker	KDOC	TOPEKA
PRICE BANKS	KANSAS PLANNERS	LAWRENCE
BOB ANDERSON	KMHA	TOPEKA
Terry Humphrey	KMHA	TOPEKA
Jerry Hazlett	KWF	Topeka
Dalyt Swft Jann	KWO	Topeka
Laura Doode	City of Topeka	Topeka

KANSAS ASSOCIATION OF COUNTIES

"Service to County Government"

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

January 24, 1991

TESTIMONY

To: Senate Local Government
Chairman Don Montgomery

From: Anne Smith
Director of Legislation

Subject : SB 23

The Kansas Association of Counties supports the concept of the recodification of the planning and zoning laws. However, there continue to be concerns with SB 23.

The first concern is subsection 23 on page 23 of the bill. We would ask that home rule authority for planning and zoning matters be an allowable option. The 105 counties and 600 plus cities all have differing needs that will be extremely difficult to address in one piece of legislation. Home rule will allow those needs to be addressed as local needs dictate.

A second concern is the manufactured housing section in the bill. The language is unclear in terms of its impact and we recommend changes be made to indicate final authority for the restriction and regulation of manufactured housing rest with the governing body of the city or county.

The last concern is that the responsibility for final approval of a comprehensive plan should rest with the governing body of a city or county and not be the planning commission's decision alone. It is the governing body, not the planning commission, who is held accountable by the citizens
who elected them.

Again, let me say that we support the recodification of the planning and zoning laws. It is clear how much effort has been put into the writing of this bill. And the dedication of those involved with SB 23 is to be commended. It is for these reasons that the county association would like to continue to work on compromise language so that the bill is beneficial to everyone concerned.

Thank you for the opportunity to address these issues. We can discuss them further with you at your convenience.

Senate L.G.
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Attachment 1

League
of Kansas
Municipalities

Mun al
Legislative
Testimony

An Instrumentality of its Member Cities. 112 West Seventh Street, Topeka, Kansas 66603 913-354-9565 Fax 354-4186

To: Senate Committee Local Government
From: Jim Kaup, League General Counsel
Re: SB 23--Planning and Zoning Law Recodifications
Date: January 29, 1991

The League appears in support of SB 23--the recodification of Kansas planning and zoning statutes recommended by the 1990 interim committee. The League had direct involvement with the interim committee's development of SB 23, as well as with that bill's predecessor--HB 3058, the 1990 bill sponsored by the Kansas Chapter of the American Planning Association for the purpose of clarifying, simplifying and updating Kansas statutory law relating to planning and zoning by cities and counties.

The League's convention-adopted 1990-1991 Statement of Municipal Policy states:

> I-3. Planning.
>
> I-3a. Planning General. (a) Cities and counties are urged to undertake and support comprehensive and continuing land use planning and management programs. (b) We support a modernization of Kansas planning laws. Consideration should be given to redefining the roles of local planning commissions and governing bodies in land use decisionmaking, more closely linking land use decisions to adopted comprehensive plans, providing greater flexibility to cities in the regulation of subdivisions and clarifying the authority to issue conditional use permits. (c) Cities should be granted clear authority to cause the removal of non-conforming zoning uses after a reasonable period of time. (d) State planning and zoning laws should be defined as general enabling statutes, expressly authorizing local legislation providing supplemental procedural or substantive provisions. (e) The amending of zoning ordinances should be defined by state law as a legislative function. (f) The authority of cities to control the development of fringe areas adjacent to cities should be expanded and cities should be specifically authorized to require subdividers to pay a fee for open space and recreational purposes in lieu of land dedication. (g) Cities should be authorized to establish and enforce building standards in the urban fringe area not subject to county regulations.

Consistent with the above policy position, the League participated actively for years in the work of the planning and zoning laws legislative committee of the Kansas Chapter of the APA. We believe there is a need to modernize the statutory law on planning and zoning. The existing language of the law is unnecessarily detailed at some points, and vague at others. The existing laws for cities, K.S.A. 12-701 et seq., was in need of an overall, objective analysis after years of piecemeal amendment. The shortcomings in the existing law have caused

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Attachment 2

unnecessary hardship not only for the public regulators of land, but also for private property owners and developers. The breadth of the public and private interest in modernizing Kansas land use law is reflected in the membership of the APA's legislative committee and is noted in the report of the interim committee on SB 23.

In addition to offering its support for SB 23 the League today would speak to two issues associated with the bill--the authority of cities and counties to regulate manufactured housing and their ability to exercise Home Rule in the enactment of local land use regulations.

Some may be surprised that the League's Statement of Municipal Policy favors state enabling legislation rather than legislative endorsement of planning and zoning by Home Rule. While strong advocates of Home Rule, the League believes that the approach found in SB 23--local governments regulating land use under general guidelines set out by state enabling legislation--has certain advantages. Public regulation of private property rights is an area of municipal law that is complex and often-litigated. A well-conceived enabling act will help local governments protect and promote public health, safety and welfare without landing in court every time a regulatory action is taken. The other principal players in the land use game--property owners--also are benefitted by the level of uniformity and predictability which follows from local land use laws enacted under authority of state enabling legislation. However, as noted in the attached document, the League does offer for your consideration a new section one to SB 23, to clarify that this zoning legislation is not intended to preclude the use of Home Rule to enact local laws which supplement or complement--but do not conflict with--the state's laws on planning and zoning.

The League respectfully requests this Committee's favorable consideration of SB 23 and the Home Rule amendment offered by the League.

League-Proposed Amendment to SB 23:

Home Rule.

In written testimony submitted to the 1990 Special Committee on Local Government, the APA said:

> The objective of the Chapter in recodifying the planning and zoning statutes has been to provide basic state enabling legislation which cities and counties would use for the framework of their local zoning laws. The existence of enabling legislation was not intended to limit or prohibit cities and counties from using their Home Rule powers to enact laws which complement or supplement the statutory law, but do not conflict with the statutory law . . .
>
> Although such a statement (that local laws that do not conflict with state law are not prohibited by enabling legislation) has not been thought to be necessary in the past, the 1990 Kansas Supreme Court decision of Blevins v. Hiebert has confused the situation considerably. The Chapter believes the statutes should err on the side of caution and specifically recognize the ability of cities and counties to enact zoning-related laws under their home rule powers.

The League agrees with the APA that the 1990 Kansas Supreme Court decision of Blevins v. Hiebert raises at least the potential for confusion as to whether a city or county may enact zoning and planning laws under its Home Rule authority. This holds true regardless of whether the state enabling legislation is K.S.A. 12-701 et seq. and K.S.A. 19-2914 et seq. or new enabling legislation such as SB 23.

In the hope of avoiding future litigation on this question, the League submits the following new Section 1:

> "This act is enabling legislation for the enactment of planning and zoning laws and regulations by cities and counties for the protection of the public health, safety, and welfare, and is not intended to prevent the enactment or enforcement of additional laws and regulations on the same subject which are not in conflict with the provisions of this act."

Consistent with the above new Section 1, the League understands the Kansas Association of Counties supports the deletion of Section 27 from SB 23. Section 27 would amend the county home rule statute, K.S.A. 1990 Supp. 19-101a, to prohibit counties from using Home Rule to "exempt from or effect changes in" SB 23. The League supports any such amendment.

League Position on Manufactured Housing.

The League's position on the subject of local regulation of manufactured housing has been one of encouraging cities to review their land use regulations for the purpose of eliminating archaic provisions which prohibit the placement of manufactured housing solely on the basis of the fact that it is not built on-site. This has been the League's position as a member of the APA's legislative study committee, and is also our position today before this Committee.

This position is based upon the League's 1990-1991 Statement of Municipal Policy:

> I-8b. **Manufactured Housing**. We encourage cities to provide for the fair treatment and placement of all housing, including manufactured housing. Local officials can best determine the appropriate location and treatment of manufactured housing not meeting local codes, based on the unique conditions, needs and standards of their community. We therefore oppose state legislation which would specifically permit the placement of manufactured housing that does not meet locally adopted nationally-recognized codes and standards in any areas of the city, including areas zoned exclusively for single family residences. We believe such legislation to be unwarranted, and an unnecessary intrusion into the constitutional home rule authority of cities. We encourage cities to review their regulations application to manufactured housing to insure that they are reasonable, non-discriminatory and non-arbitrary.

At the present time the Kansas Statutes are silent as to the ability of cities to regulate manufactured housing differently than site-built housing. The League supports the language of the 1990 interim committee for Section 20 of SB 23, which would impose upon cities the same basic prohibition counties are now subject to under K.S.A. 19-2938. If adopted, a city would no longer be able to "exclude" manufactured housing from within its jurisdiction. The wording of Section 20 is essentially the same as that used in 1990 HB 3058, Sec. 16--the bill which led to the interim study and to SB 23.

Unfortunately for the League, this position of support for the interim committee's language in Section 20 has placed us in a cross-fire between those on the one hand who contend that this position is contrary to Home Rule and is an unnecessary surrender to the state of local land-use regulatory authority, and those on the other hand who argue that state law should expressly forbid any city (and county) from enacting laws or regulations that treat manufactured housing differently than site-built housing.

While it is for the Legislature to decide whether the State should have a policy on the placement of manufactured housing, and if so what that policy should be, the League does note for the Committee's information the intent of the original drafters of Section 20--the APA legislative committee. It is the League's understanding, as an active participant with the APA's committee, that the APA's proposal to the legislature was to statutorily ban cities and counties from adopting or enforcing zoning regulations which exclude manufactured housing from the entire zoning jurisdiction of the city or county enacting those regulations.

This understanding of the language in Section 20 of SB 23 translates to the following: If a city has, for example, distinct residential zoning districts designated as R-1, R-2, R-3, R-

4 and R-5, that city can adopt regulations which have the effect of excluding manufactured housing from zone R-1 or R-2, etc. but that city cannot adopt regulations which have the effect of excluding manufactured housing from all of its districts where residential uses are permitted.

In short, the League will not resist legislation that places cities under the same prohibition counties now have under K.S.A. 19-2938. We believe that would be a proper balance of our policy interests. Obviously, conferees appearing before this Committee have expressed concern over the ramifications--including the prospect of litigation--that may follow from enactment of Section 20. Some interested parties have proposed alternative language--but the League has not yet heard language superior to that adopted by the interim committee by way of the APA legislative study committee.

If there can be no consensus reached as to the desirability of Section 20, as it now appears in SB 23 and with the knowledge of the intent the APA had for the meaning of that language, the League would respectfully suggest deletion of Section 20 in order that the host of worthwhile and long-overdue improvements to the Kansas planning and zoning statutes not be lost.

Corrections to SB 23 as Introduced

The League has had its attention called to several sections of SB 23 which contain what is thought to be inadvertent language. Those noted below, the League believes, are not policy-related and should be considered merely as clean-up and reconciliation with the intent of the 1990 interim committee:

1. Page 1, New Section 11(a), line 8,: There is a typographical error in the second sentence. The word "or" should be "and", otherwise it permits an individual to submit a plat that only shows the location of streets, parks, etc., and not lots.

The line should read: ". . . or the location and dimensions of all streets, alleys, parks ~~or~~ and other . . ."

2. Page 9, line 41, New Section 11(e):

To remove possible confusion as to what is meant by the phrase "building and zoning permit", the line should be amended to read as follows:

"(e) No building or zoning ~~or building~~ permit shall be issued for the use or . . ."

3. Page 19, line 17, New Section 22:

This language, relating to time of vesting of development rights, was intended to read as follows:

"construction has begun ~~or~~ and substantial amounts of work have been completed..."

4100 W. 13th
Lawrence, Ks.

Local Government Committee Members:

I speak in behalf of the Lawrence Association of Neighborhoods. One of our concerns with SB23 is the shortness of notification time. We realize that changes are necessary in a progressive community. We do insist however, that those changes shall be in the public interest. Experience has shown that citizen input is necessary to prevent some changes benefitting only a few.

We citizens try to live in an orderly manner. In order to do so we must schedule our time. This involves planning for days and weeks ahead. Fifteen days is too limiting a time for the ordinary citizen to rearrange his schedule, to gather essential data, and to present his conclusions in a concise and orderly manner. Please remember that those requesting changes often have an unlimited time in preparing their case.

Some hearings require the input of several citizens. Again fifteen days would be a limiting factor in obtaining the participation of all affected citizens.

Many of citizen group studies would be better presented with the aid of technical and professional people. Normally professional people are busy people with a limited schedule. Fifteen days is not sufficient time to retain personnel, to acquire necessary data, to evaluate the information and to present reasoned conclusions. The studies needed for flood plane rezoning might require weeks, as an example.

If ordinary citizens are to have input into the management of local government, they need sufficient time to organize and present their findings in an orderly and convincing manner.

Thank you,
Gordon Bower

Senate L.G.
2-5-91
Attachment 3

The League of Women Voters of Lawrence-Douglas County

January 29, 1991

Chairman Montgomery and Members
Senate Local Government Committee:

My name is Nancy Shontz. I am a former Lawrence city commissioner. Today, I represent the League of Women Voters of Lawrence-Douglas County. Our comments, as always, are based on positions reached through member study and agreement.

We welcome a recodification of the Kansas planning laws. We also welcome the ability of local governments to adopt such provisions as overlay districts and transfer of development rights, payment of a fee in lieu of dedication of land and both off-site and on-site improvements. They are all overdue. We do, however, find four proposed amendments in this bill very disturbing.

The first of these is the proposed 15 day notice to the public. Most, if not all, of the planning laws used by both Lawrence and Douglas County require 20 day notice.

In dealing with a wide range of local planning issues over the years, both as participants and observers, we have found that even 20 days notice is often not sufficient. In 20 days, and despite work and family responsibilities, members of the public must figure out what the problem is, gather the facts, prepare their arguments and present them in a coherent way at the hearing. The court's view that zoning is a quasi-judicial function tends to pack the council chambers with lawyers and professionals and to encourage formal procedures, making it all the more necessary for John Doe to have sufficient time to properly prepare his case in order to appear creditable.

The League of Women Voters of Lawrence-Douglas County believes that reducing notice to 15 days does a great disservice to the public by narrowing the window of opportunity for members of the public to participate in planning and zoning activities of their local governments and most certainly limits their ability to protect their interests through effective lobbying.

The second concern is the deletion of the provisions on planned unit developments. PUDs provide a welcome alternative to conventional zoning in that the usual rules of lot by lot zoning may be replaced by ones that permit flexibility in design, a variety of housing types and creative ways of turning development problems, such as streams, rock outcrops, landmarks, into assets. Equally importantly, the statute provides guidelines for spelling out the rights of the City, the entity owning the open spaces and communal facilities, and the owners of the individual lots in regard to the operations, maintenance of open space, changes in the plan etc. The confidence inspired by having an approved plan agreeable to all three parties - the developer/ landowner, City and purchasers of the constituent properties - makes planned unit developments very desirable.

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Senate Bill 23 merely gives carte blanche to local governments to write their own PUD ordinances. Lawrence tried that back in the 60s and 70s when it experienced tremendous development pressures, budgetary problems and rough terrain. Those turned out to be stormy times because the ordinances failed to adequately protect the rights of the public or spell out the prerogatives of the City. It wasn't until the state legislation was adopted that Lawrence was able to create an ordinance that didn't eventually come under fire from residents who felt betrayed.

We are concerned that the legal status of our established PUDs would be jeopardized if the statute is removed. This is particularly so because our current ordinance incorporates some statutory provisions by reference. Without the law our ordinance falls as well. If Lawrence needs this legislation, and its presence does no harm elsewhere in the state, why not leave it undisturbed?

Our third concern is that in Senate Bill 23 comprehensive plans no longer require data to support their predictions, policies and provisions. Studies are necessary to forecast future needs and to justify resulting policies. Without data, predictions can go haywire and plans can be ineffective or even arbitrary in dealing with the future. If the supporting data requirement has been removed in deference to communities without the resources to carry out the studies, we suggest that such communities be permitted to adopt basic, statutorily defined subdivision regulations in lieu of a comprehensive plan.

Finally, the removal of the chief engineer's authority to grant permits for filling floodfringes leaving only the flood insurance program permit system in place is a mistake. They serve different, but valuable purposes. The goal of the federal flood insurance program is to reduce flood damage to property. The division of water resources is primarily concerned with water quality and its availability for human use. The environmental coordination act expands on those goals by bringing in the environmental agencies to evaluate the effects of proposed water projects on fish, wildlife, woods, archaeological sites, etc. as part of the permitting process. All three authorities must be allowed to carry out their duties in order to protect our property, and our water supplies, and our environmental resources.

In summary, the League of Women Voters of Lawrence-Douglas County urges you to reinstate 1) the 20 day notice requirements, 2) the planned unit development provisions, 3) data-supported comprehensive plans and 4) the filling of floodway fringes as a water development project subject to review and approval of the chief engineer of the division of water resources with advice from the environmental agencies listed in the environmental coordination act.

Thank you.

LWVL-DC P.O. Box 1072 Lawrence, KS 66044

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TESTIMONY SB 23
SENATE LOCAL GOVERNMENT COMMITTEE

JAN. 24, 1991

I am Jerry Hazlett, Executive Manager of the Kansas Wildlife Federation. The Federation is a not-for-profit, wildlife and natural resources conservation and education organization. Our statewide membership joins with the Kansas members of our national affiliate, the National Wildlife Federation, in support of the wise use, sustained management and public enjoyment of our vital air, water, soil, forest and wildlife resources.

Thank you for this opportunity to testify on Senate Bill 23.

This bill is obiviously the result of many years of dedicated work and effort of many. It achieves the balance of the many interests and existing laws dealing with local planning and zoning, and also provides clarification of the responsibilities and powers of several authorities.

However, missing from this legislation are other local planning components designated through State Law. These missing components include the Non-point Source Pollution Program, the Local Environmental Protection Act and the Riparian and Wetlands Program. These programs are all important aspects of the State Water Plan. All are recognized in the State Water Plan as high priority programs for planning and implementation at the State, County and Local levels.

The Federation is not opposed to this bill because it doesn't contain these needed provisions. However, we are opposed because of the sentence in Lines 35-38, Page 24, Section 28. "The provisions of this section shall not apply to properly placed fills other than levees located in the floodway fringe within a participating community as defined and identified by the national flood insurance act."

This sentence eliminates the State permitting review process mandated by the State Environmental Coordination Act. At the present time, the permit review process is vital for upholding the State's interests of the State Water Plan in county and city planning and zoning efforts.

Because of this, the Federation asks this committee to strike this sentence from SB 23.

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Attachment 5

STATEMENT OF GEORGE A. AUSTIN
WATER STRUCTURES SECTION HEAD
DIVISION OF WATER RESOURCES
KANSAS STATE BOARD OF AGRICULTURE
BEFORE THE
SENATE LOCAL GOVERNMENT COMMITTEE
ON
SENATE BILL NO. 23

February 5, 1991

Mr. Chairman and members of the Committee, thank you for the opportunity to speak to the committee in connection with this bill. The bill for the most part is a recodification of existing zoning laws and the Division of Water Resources is affected by New Sections 16, 25, and 28. During this recodification process, some changes in existing statutory authority of the Chief Engineer were proposed in the language first introduced in the House last year. We presented testimony to the House Committee on Local Government last session and to the Interim Committee including some compromise language worked out in a meeting with M.S. Mitchell, a Wichita-area developer and consultant who has presented testimony as Chairman of the Legislative Committee of the Home Builders Association.

Senate Bill No. 23 would repeal K.S.A. 12-734 and 735 dealing with flood plain zoning and replaces them with New Section 16, which in essence, continues these same functions and responsibilities of the Chief Engineer. Likewise, the bill would repeal K.S.A. 12-710 and replace it with similar responsibilities in New Section 25. In addition, the bill would amend K.S.A. 24-126, the levee law, to exempt certain properly placed fills other than levees located in the floodway fringe as specified in Section 28. The Division is satisfied with the current language of Senate Bill No. 23 which was the result of work by the House and Interim committees and took in account our testimony. The bill would continue the division's current role of review and approval of flood plain ordinances, providing advice when a local entity needs help, especially to small communities which usually do not have access to technical staff resources, conducting workshops for local officials and coordinate with the Federal Emergency Management Agency (FEMA).

There is a difference in the enforcement actions by the state or federal government. The Federal Emergency Management Agency's (FEMA) sanctions are on the community as a whole rather than the individual violators. Our enforcement concentrates on the individual violators and often works with the community rather than penalizing everyone.

By the way, a previous conferee indicated that one community had encountered difficulty when it approved a variance in accordance with FEMA rules and the Division, some time later, denied the variance. In the only case that I am aware of, the planning commission approved three variances that may not be in accordance with FEMA rules in the fall of 1989. This was over the recommendations of their professional staff, who had relayed to our staff their concerns at that time. It is our understanding that at that time the planning commission was fully aware of our objections. In the testimony before the interim committee, I was made aware of the fact the planning commission had

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ignored those objections and we have informed FEMA of this situation and have followed up in writing regarding our concerns.

The statutory language change, which I indicated earlier was agreed to with other conferees, involves the Chief Engineer's authority to approve floodway fills as proposed by amendment to K.S.A. 24-126 in Section 28 of this bill. If the Chief Engineer retains the authority to review and approve the flood plain zoning ordinances, resolutions, variances and regulations, as provided for in New Section 16, it may not be necessary to review every individual project for such fills. If we can examine the projected plans for development of the flood plains for the community as a whole, it seems that the individual projects in the floodway fringe which comply with those plans may not need further review. This would still allow the Division to consider the impact of the flood plains management program and any proposed ordinances on the implementation of the State Water Plan and coordinate the review with other statutes administered by the division for consistency. Review of flood plain ordinances without any authority would likely result in a meaningless exercise with little benefit to either the community or the state.

While new Section 16 imposes a 90-day time limit, which currently does not exist, on the review and approval of flood plain ordinances, we feel that is a reasonable time limit which we can support. Fortunately, we have been able to dedicate more staff time to flood plains management activities this last year or so due to a FEMA grant.

You have heard testimony from environmental entities that they do not want diminution of the Chief Engineer's authority because of the possible impact on the environment. I must admit that at the time the language in Section 28 was worked out, we did not consider this particular impact. The Threatened and Endangered Species Act applies only to those projects which are sponsored by a governmental entity or when a state agency permit or approval is needed. A consequence of the amending of K.S.A. 24-126 in Section 28 of the bill, is that the areas of these floodway fringe fills will now be outside the protection of the Threatened and Endangered Species Act and allow for the destruction of critical habitat of threatened and endangered species without mitigation opportunity.

In summary, we urge the passage of New Sections 16 and 25 unchanged from current language, and will support the committee's wishes in connection with Section 28. Thank you very much. I would be happy to answer any questions.

January 29, 1991
Senate Committee on Local Government

SB NO. 23: PLANNING AND ZONING RECODIFICATION

My name is Judee Johnsen and I am here on behalf of the Steering Committee of the Indian Hills Neighborhood Association. Indian Hills is located in south-central Lawrence and comprises over 600 households.

We recently sent each committee member a letter with our comments about Senate Bill No. 23. As in the letter I want to reiterate today that the intent of this bill is excellent. Uniform recodfication in Kansas will make it easier for planners, municipalities, developers and individual property owners. Our major concern is the proposed change in length of the notification period before public hearings from the traditional 20 or 30 days to only 15 days. This provision occurs in New Sec. 8. (c), New Sec. 17. (b) and New Sec. 18. (b). Fifteen days is too short a time frame for a private citizen or a neighborhood association to become informed about and prepare for a hearing. The public needs ample opportunity to provide input into decisions that have an impact on property values and quality of life. Even for an organized group 20 days is too short a period.

I am here today to address an additional concern in Senate Bill No. 23, that is inclusion of the sentence in Sect. 28, page 24, lines 35 through 38. It reads, "The provisions of this section shall not apply to properly placed fills other than levees located in the floodway fringe within a participating community as defined and identified by the national flood insurance act." The phrase "properly placed fills" is an extremely ambiguous term which needs precise definition such as type of fill and height, degree of compaction and provisions to avoid erosion. Without these the sentence should be deleted.

I do not pretend to be an expert on landfills and floodplains, however the neighborhood has experience with both, plus periodic flooding. Naismith Creek borders and bisects Indian Hills; and our southern boundary is the city limits with a floodplain wetland on the county side. Much of the runoff from KU and two neighborhoods to the north ends up in this floodplain. In late 1988, it was discovered that part of this 11 acre area was being illegally filled. Piles of asphalt roadways and concrete could be seen. The neighborhood association's concerns about this situation were two: what was the fill and how high would it be?

Because this floodplain was also a wetland it came under the jurisdiction of the Army Corps of Engineers. The Corps is one of the regulating agencies for wetlands-filling permits. In April 1989

Senate L. G.
2-5-91
Attachment 7

we were finally able to have a gentleman from the Corps come to speak at an association meeting. After explaining about rivers, highwater marks and the permitting process there were still questions. When asked about what could be used as fill he indicated that the Corps had no jurisdiction to mandate the type of fill. His comment was he hoped it would not be toxic. The Corps also had no control over the height and breadth of the fill. Making this floodplain higher than the neighborhood's adjacent land would result in extensive flooding of streets and homes. This was of no concern to the Corps.

Someone with authority must have control over the filling-in of floodplains. Individual properties cannot be viewed as such, like the Corps did, but should be considered as part of an entire watershed. Currently the Chief Engineer of the Division of Water Resources, State Board of Agriculture has this authority. This will not be true if the aforementioned sentence is included in Senate Bill No. 23. Removal of the authority of the Chief Engineer to regulate floodplain fill would leave Kansans under the protection of a federal agency. The Indian Hills Neighborhood Association's experience with the Corps is that federal agencies are less than responsive to our concerns.

We appreciate the opportunity to present testimony at this hearing. Thank you.

Judee Johnsen, President
Indian Hills Neighborhood Association
806 West 29th Street
Lawrence, Kansas 66046

KANSAS ASSOCIATION OF REALTOR

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TO: THE SENATE LOCAL GOVERNMENT COMMITTEE

FROM: KAREN FRANCE, DIRECTOR OF GOVERNMENTAL AFFAIRS

DATE: JANUARY 24, 1991

SUBJECT: SB 23

Thank you Mr. Chairman and members of this committee. I appreciate the opportunity to testify before you today. On behalf of the Kansas Association of REALTORS®, I appear today to address one section of SB 23.

Section 20 of the bill provides that "The governing body shall not adopt or enforce zoning regulation which have the effect of excluding manufactured homes."

While we understand the general intent of the provision, we believe that it may have unintended consequences.

A governing body may develop certain requirements, such as square footage, which would prevent even the site built homes from being built if they could not meet the zoning requirements in a particular area.

It seems fair and logical that the laws should apply equally to both site built and manufactured homes. This section would appear to permit manufactured homes to be placed in areas which identical, non-conforming site-built homes would be prohibited. We do not think the legislature intends that result.

Senate L. G.
2-5-91
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While we know this section is included to address the issue of the "arbitrary" exclusion of "manufactured homes", this language actually continues the distinctions between "site-built" and "manufactured homes".

We ask that you either eliminate or amend this section of the bill to insure that all homes, whether "manufactured" or "site built", be subjected to the same zoning restrictions.

Thank you for the opportunity to testify, I will be happy to answer any questions you might have.

AMERICAN CIVIL LIBERTIES UNION
of Kansas and Western Missouri

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Dick Kurtenbach
EXECUTIVE DIRECTOR

Carla Mahany
ASSISTANT DIRECTOR

January 29, 1991

Senator Don Montgomery
Room 128S State Capitol
Topeka, KS 66612

Re: SB 23

Dear Senator:

The Kansas affiliate of the American Civil Liberties Union has taken a position to opposed any reduction in hearing time allocated for proposed regulations by any local government body. As such, we are on record as opposing the amendments in SB23 that would reduce time for public comment.

It is our feeling that shortening the opportunity for public comment is a diminution of due process rights for all citizens and we urge the Local Government Committee to at least restore the twenty day minimum time line.

Thank you for consideration of this matter. I have enclosed copies of this letter for each member of the Committee.

Sincerely,

Steve Lopes

Steve Lopes, vice-president
Kansas-ACLU

Senate L.G.
2-5-91
Attachment 9

CITY OF OLATHE

January 28, 1991

Senator Don Montgomery and the
Senate Local Government Committee
128-S Statehouse
Topeka, KS 66612

Senate Bill No. 23 - Planning and Zoning Enabling Legislation

Dear Senator Montgomery:

Although I cannot testify in person about the need for recodification of the states planning enabling legislation, I did want to express my support for Senate Bill No. 23. I have been a member of the Olathe Planning Commission since 1986. Prior to that, I have served and worked with school boards and municipalities.

Given the length of the current enabling legislation and the many ways of complying with state statutes, it can become confusing for someone trying to understand the statutory authorities for cities and counties. It is also difficult to separate and understand the different sections for zoning, subdivision, joint committees, metropolitan commissions, board of zoning appeals, etc.

There have been times where we have wanted to try something innovative but could not because of the lack of enabling legislation. In other situations, the language was not clear enough for the Planning Commission to adopt some regulations or to feel comfortable in approving or denying some requests.

My interest as a Planning Commissioner is in planning, for growth and for the future of the community. In general, I view the recodification of the planning enabling legislation as a way to simplify and unify statutes relating to planning, zoning and subdivisions. It would also make the statutes easier to understand and use. Although there is no one major issue that would generate widespread interest (or controversy) the enabling legislation needs to be reviewed and updated.

I would encourage the Senate Local Government Committee to favorably recommend the passage of Senate Bill No. 23.

Sincerely,

Myrna Stringer

Myrna Stringer

Senate L.G.
2-5-91
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