

MINUTES OF THE SENATE COMMITTEE ON LOCAL GOVERNMENT

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

9:00 a.m./~~p.m.~~ on February 27, 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:

Senator Ross Doyen
Ed Redmon, State Fire Marshal
David Retter, City Attorney, Concordia

SB 258 - Concerning fire safety; relating to exemptions to regulations adopted by the fire marshal.

Sen. Doyen, who had requested the introduction of the bill, stated that he had visited with the Fire Marshal and had found that perhaps there is no need for the bill because most of these facilities have been placed in buildings which had been used for other purposes and are, therefore, exempt. In Cloud County, a new building was built, and it was felt that there would be a requirement to install a sprinkler system. However, an exemption from installing the sprinkler system may be able to be covered with rules and regulations.

The Chairman stated that he could see no problem with putting the bill in the statutes.

Ed Redmon, State Fire Marshall, stated that he, as Fire Marshal, already has the authority to exempt property from the installation of a sprinkler system, especially in smaller communities. Even Class C new buildings are exempt from the requirement. However, the bill will not cause any harm if passed. If a sprinkler system is required, it is under a home rule ordinance, and he does not feel that local authority would require the sprinkler system. Mr. Redmon can support the bill or not support the bill because it does no harm.

Sen. Daniels began a discussion regarding the insertion of "shall" on line 25 of the bill with regard to a conflict in a situation that would involve the safety of people. It was noted that the only thing being exempted by the bill is county historical museums. Sen. Daniels made a motion to strike "county" because not all small city museums are county museums, Sen. Ehrlich seconded.

Sen. Burke felt that perhaps striking "shall" would raise questions regarding liability when an exemption is made from installing a sprinkler system and a fire occurs. Mr. Redmon said that sound judgment is made when exemptions are allowed, however, his point is that there is nothing now in the statutes requiring an exemption for a building with a capacity of 300 or less. Sen. Burke said he is sympathetic with Sen. Doyen's problem, however, he is not certain that the bill should be broadened and rushed out of committee before further investigation.

On a call for a vote on Sen. Daniels motion, the motion carried.

Sen. Allen commented that if "shall" is not in the bill, then the bill is not needed. Mr. Redmon noted some examples where "shall" could cause him some concern. The Chairman delayed action on the bill for a few days until further work can be done on it.

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON LOCAL GOVERNMENT,

room 531-N, Statehouse, at 9:00 a.m./~~p.m.~~ on February 27, 1991

SB 259 - Concerning certain trusts; relating to pledging of other money for trust purposes.

Sen. Doyan had the bill introduced but introduced David Retter, City Attorney for Concordia, to testify in support of the bill. Mr. Retter will submit written testimony at a later date. He stated that this is an amendment to the public trust law which will increase the funding flexibility for cities. It is to be used by public interest groups, and local units of government will serve as both trustee and beneficiary. If the interest group loses its interest, there will be a way to deal with the money by a responsible governing unit rather than having to hire an accountant. There would be two safety valves: 1. It has to be previously accepted by the governing body and 2. The expenditures into the trust have to be approved by the governing body. The local governing unit would have control of the trust. This concluded the hearing on SB 259.

Sen. Steineger began a short discussion regarding the fact that the bill provides the authority to use ad valorem money for trusts.

Sen. Allen made a motion to recommend SB 259 favorable for passage, Sen. Burke seconded, and the motion carried.

The Chairman called the committee's attention to SB 57, previously heard, dealing with the repair or removal of unsafe or dangerous structures. Ms. Kiernan had prepared a balloon of the bill with the suggested amendments. (Attachment 1). Language was inserted in K.S.A. 12-1750 to limit a city to "repair" of unsafe structures, not to include renovation of them. Language in K.S.A. 12-1755 gives cities the authority to recover the cost incurred while repairing in addition to the cost of razing unsafe structures.

Sen. Lee made a motion to adopt the amendments, Sen. Burke seconded, and the motion carried.

Sen. Lee made a motion to recommend SB 57 favorable for passage as amended, Sen. Frahm seconded, and the motion carried.

The Chairman briefly discussed the bills still in committee. He noted that SB 186 regarding county roads and bridges heard yesterday needs clarification of language on what must be submitted for bids. The committee was in agreement that an Attorney General's opinion should be requested.

The minutes of February 26 were approved.

The meeting was adjourned at 9:46 a.m.

Attachment 2, David E. Retter, City Attorney of Concordia, submitted February 28, 1991.

SENATE BILL No. 57

By Committee on Local Government

1-24

AN ACT concerning the repair or removal of unsafe or dangerous structures; amending K.S.A. 12-1751, 12-1752 and 12-1753 and repealing the existing sections.

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

Section 1. K.S.A. 12-1751 is hereby amended to read as follows: 12-1751. The governing body of any city shall have power to cause the repair or removal of, or to remove any structure located within the city, which may have become unsafe or dangerous. The governing body may appoint a structures appeals board of not less than three electors of the city to conduct the hearing required by K.S.A. 12-1752, and amendments thereto.

Sec. 2. K.S.A. 12-1752 is hereby amended to read as follows: 12-1752. Whenever the enforcing officer files with the governing body of the city a statement in writing that any structure, describing the same and where located, is unsafe or dangerous, the governing body shall, by resolution, shall fix a time and place at which the owner, the owner's agent, any lienholders of record and any occupant of such structure may appear and show cause why such structure should not be condemned and ordered repaired or demolished. Such resolution shall be published once each week for two consecutive weeks on the same day of each week days at least five days apart. At least 30 five days shall elapse between the last publication and the date set for the hearing. A copy of the resolution shall be mailed by certified mail within no later than three days after its first publication to each such owner, agent, lienholder and occupant, at addressed to the last known place of residence, and shall be marked "deliver to addressee only." As an alternative to mailing a copy of such resolution, the resolution may be served personally on each such owner, agent, lienholder and occupant.

Sec. 3. K.S.A. 12-1753 is hereby amended to read as follows: 12-1753. On the date fixed for hearing or any adjournment thereof, the governing body or the structures appeals board shall hear all evidence submitted by the owner, his or her the owner's agent, lienholders of records and occupants having an interest in such structure as well as evidence submitted by the enforcing officer filing the

Senate L.G.
2-27-91
Attachment 1

1-2

tatement and shall make its findings by resolution in writing. If
 2 such hearing is conducted by the structures appeals board, the
 3 board, at the conclusion of the hearing, shall make findings and
 4 transmit its written findings to the governing body for its review, ✓
 5 ~~on the record of such hearing and findings.~~ After such review or
 6 after the conclusion of a hearing conducted by the governing body,
 7 the governing body shall adopt findings by resolution. If the gov-
 8 erning body of the city shall find finds that such structure is unsafe
 9 or dangerous, such resolution shall direct the structure to be repaired
 10 or removed and the premises made safe and secure. Such resolution
 11 shall be published once in the official city paper and a copy
 12 mailed to the owners, agents, lienholders of record and oc-
 13 cupants in the same manner provided for the notice of hearing.
 14 The resolution shall fix a reasonable time within which the repair
 15 or removal of such structure shall be commenced and a statement
 16 that if the owner of such structure fails to commence the repair or
 17 removal of such structure within the time stated or fails to diligently
 18 prosecute the same until the work is completed, the governing body
 19 will may cause the structure to be ~~razed and~~ removed. Such res-
 20 olution shall be published once in the official city newspaper and a
 21 copy shall be mailed or served on the owners, agents, lienholders
 22 of record and occupants in the same manner provided for the giving
 23 of notice of the hearing in K.S.A. 12-1752, and amendments thereto.

24 Sec. 4. K.S.A. 12-1751, 12-1752 and 12-1753 are hereby
 25 repealed.

26 Sec. 5. This act shall take effect and be in force from and after
 27 its publication in the statute book.

repaired or

Proposed Amendment to Senate Bill No. 57

Insert following:

Sec. 1. K.S.A. 12-1750 is hereby amended to read as follows:
 12-1750. ~~The following words and phrases when used in this act shall, for the purpose of this act, have the meanings respectively ascribed to them in this section~~ When used in this act:

(a) "Structure" ~~shall mean and include~~ means any building, wall or other structure; and

(b) "enforcing officer" ~~shall mean~~ means the building inspector or other officer designated by ordinance and charged with the administration of the provisions of this act;

(c) "repair" means to make a structure safe and secure.

Sec. 2. K.S.A. 1990 Supp. 12-1755 is hereby amended to read as follows: 12-1755. (a) If the owner of any structure has failed to commence the repair or removal of such structure within the time stated in the resolution or has failed to diligently prosecute the same thereafter, the city may proceed to ~~raze and repair or~~ remove such structure, make the premises safe and secure, or let the same to contract. The city shall keep an account of the cost of such work and may sell the salvage from such structure and apply the proceeds or any necessary portion thereof to pay the cost of repairing or removing such structure and making the premises safe and secure. All moneys in excess of that necessary to pay such costs and the cost of publications of notice and any postage for mailing of notice, after the payment

of all costs, shall be paid to the owner of the premises upon which the structure was located.

(b) The city shall give notice to the owner of such structure by restricted mail of the total cost incurred by the city in repairing or removing such structure and making the premises safe and secure and the cost of providing notice. Such notice also shall state that payment of such cost is due and payable within 30 days following receipt of such notice. If the cost is not paid within the thirty-day period and if there is no salvageable material or if moneys received from the sale of salvage or from the proceeds of any insurance policy in which the city has created a lien pursuant to K.S.A. 40-3901 et seq., and amendments thereto, are insufficient to pay the cost of such work, the balance shall be collected in the manner provided by K.S.A. ~~1985~~ 1990 Supp. 12-1,115, and amendments thereto, or shall be assessed as a special assessment against the lot or parcel of land on which the structure was located and the city clerk at the time of certifying other city taxes, shall certify the unpaid portion of the costs and the county clerk shall extend the same on the tax rolls of the county against such lot or parcel of land. The city may pursue collection both by levying a special assessment and in the manner provided by K.S.A. ~~1985~~ 1990 Supp. 12-1,115, and amendments thereto, but only until the full cost and any applicable interest has been paid in full.

Whenever any structure is removed from any premises under the provisions of this act, the city clerk shall certify to the county appraiser that such structure, describing the same, has

been removed.

(c) If there is no salvageable material, or if the moneys received from the sale of salvage or from the proceeds of any insurance policy in which the city has created a lien pursuant to K.S.A. 40-3901 et seq., and amendments thereto, are insufficient to pay the costs of the work and the cost of providing notice, such costs or any portion thereof in excess of that received from the sale of salvage or any insurance proceeds may be financed, until the costs are paid, out of the general fund or by the issuance of no-fund warrants. Whenever no-fund warrants are issued under the authority of this act the governing body of such city shall make a tax levy at the first tax levying period for the purpose of paying such warrants and the interest thereon. All such tax levies shall be in addition to all other levies authorized or limited by law and shall not be subject to the aggregate tax levy prescribed in article 19 of chapter 79 of the Kansas Statutes Annotated, and amendments thereto. Such warrants shall be issued, registered, redeemed and bear interest in the manner and in the form prescribed by K.S.A. 79-2940, and amendments thereto, except they shall not bear the notation required by that section and may be issued without the approval of the state board of tax appeals. All moneys received from special assessments levied under the provisions of this section or from an action under K.S.A. ~~1985~~ 1990 Supp. 12-1,115, and amendments thereto, when and if paid, shall be placed in the general fund of the city.

2-27-91

MEMORANDUM

TO: SENATE COMMITTEE ON LOCAL GOVERNMENT,
HON. DON MONTGOMERY, CHAIRPERSON
FROM: DAVID E. RETTER
RE: SB 259
DATE: FEBRUARY 27, 1991

The following is submitted in support of the amendment to K.S.A 58-2433 proposed by SB 259. The purpose of the proposed amendment is threefold: (1) encourage local innovation; and (2) foster donations of private funds for meritorious public purposes; and (3) provide more funding flexibility to municipalities so that public trusts can be more effectively used.

K.S.A. 58-2433 is included in K.S.A. 58-2431 et seq. These statutes deal with "Trusts for State and Political Subdivisions." The original statute was enacted in 1974 and no appellate cases or Attorney General opinions are annotated construing it. It is a little-used alternative to a conventional trust.

Public trusts could be used for such laudable purposes as locally created funds to provide bonus pay for exceptional teachers, or foster Art in the Park or economic development. Donors are more likely to give private money to a specific program than the general fund.

Public trusts under K.S.A 58-2432 et seq. have some good features. Statutory immunity of the local governing body when it sits as the board of trustees (K.S.A. 58-2437 and 58-2438) should encourage innovative responses to local problems.

Another good feature of the existing law is that the local board controls a dedicated fund and allows discretionary matching of private funds donated to the trust. However, there is a problem with the existing law which may explain why it has not often been used since 1974. Current K.S.A. 58-2433 prohibits use of ad valorem tax funds in conjunction with trust funds. It is questionable if there is a need for such a limitation. The limitation is removed by SB 259.

The prohibition does not prohibit using public funds derived from other sources from being used with public trust funds (i.e. sales tax revenues). So, if intended as a limit, it is not effective. If it is not intended as a limit, the language should be removed. There are already safeguards built into the statutory scheme.

The statutory safeguards include the governing body's discretion to accept the trust in the first place. The Public Trust must be accepted in writing and the trust and the written acceptance must be recorded. See K.S.A. 58-2432.

SB 259 MEMO
p. 1 of 2

*Senate L.G.
2-27-91 (2-28-91)
Attachment 2*

2-27-91

Also, the local governing body must approve expenditures to match the private funds in such a trust under the existing law and as amended by SB 259. (See K.S.A. 58-2433 and SB 259). These safeguards render unnecessary the existing statutorily-mandated ad valorem prohibition.

The bill would create opportunities for donors to give to a specific program or purpose, and give local governing discretion to match the private funds if desired.



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