

Approved: _____


Date

MINUTES OF THE HOUSE COMMITTEE ON TAXATION.

The meeting was called to order by Chairperson Phill Kline at 9:00 a.m. on January 20, 1995 in Room 519-S of the Capitol.

All members were present except: Rep. Graeber, excused
Rep. Lawrence, excused

Committee staff present: Chris Courtwright, Legislative Research Department
Tom Severn, Legislative Research Department
Don Hayward, Revisor of Statutes
Ann McMorris, Committee Secretary

Others attending: See attached list

Conferees appearing before the committee: Listed after bill on which they appeared.

The meeting was called to order at 9:00 a.m. by Chairperson Phill Kline.

Chairperson Kline presented two committee bills for introduction:

1. Repeal the sunset provision of the local tax rate.
2. Car tax bill which will phaseout the regulation of 36.5 mills as relating to car tax.

Moved by Hayzlett, seconded by Shore, the two aforementioned bills be introduced as committee bills, Motion carried.

Chris Courtwright of Legislative Services briefed the committee on **SB 14** hearings.

Chair opened discussion on:

SB 14 - Sales tax exemption for original construction labor services.
(Committee on Assessment & Taxation)

Proponents:

Rep. Joann Freeborn (Attachment 1)
Senator Robert Vancrum (Attachment 2)
John Samples, Kansas Building Industry Assn. (Attachment 3)
Karen France, Chm. Govt. Affairs, Ks. Assn. of Realtors (Attachment 4)
Bob Corkins, Kansas Chamber of Commerce & Industry (Attachment 5)
Bob Totten, Kansas Contractors Assn. (Attachment 6)
Hal Hudson, Natl. Federation of Independent Business (Attachment 7)
Paul Robben, Home Builders Assn. of Greater Kansas City

Written Testimony from:

Hermes Landscaping (Attachment 8)
Kansas, Inc. by Charles Warren (Attachment 9)
Heavy Constructors Assn. of Greater KC Area (Attachment 10)

Chair closed hearing on **SB 14**.

Adjournment.

The next meeting is scheduled for January 23, 1995.

TAXATION COMMITTEE GUEST LIST

DATE: 1-20-95

NAME	REPRESENTING
KEVIN T. STAMPER	INTERN-SEN. J. MORAN
Dan Hermes	BUDGET
Steve Stotts	Revenue
Jim McHaff	KS AFL-CIO
Tom Stattery	AGC of Ks.
MATTHEW MARTIN	KAR
KAREN FRANCE	KAR
Sen. Bob Vandergriff	
Jamie Clover Adams	KS Grain & Feed Assn
Bob Totten	KS Contractors Association
DAN MORGAN	The Builders' Assn.
Trudy Perkins	CPAK
Craig Lawson	Intern - Pat Pettey
Mike Heim	Heim, Ebert & Weir
RICHARD RODEWALD	TAXPAYERS
TRUDY ARON	AMER INSTITUTE OF ARCHITECTS
Trudy Racine	KD&C
Christy Young	Topeka Chamber of Comm.
J. L. Lutz	DP Chamber

JOANN LEE FREEBORN
REPRESENTATIVE, 107TH DISTRICT
CLOUD, OTTAWA COUNTIES
AND PART OF CLAY AND DICKINSON COUNTIES
RR 3, BOX 307
CONCORDIA, KANSAS 66901-9105

STATE CAPITOL
TOPEKA, KS 66612-1504
913-296-7645
1-800-432-3924



TOPEKA

HOUSE OF
REPRESENTATIVES

TESTIMONY FOR HOUSE TAXATION COMMITTEE, HOUSE BILL 2056

JANUARY 20, 1995

COMMITTEE ASSIGNMENTS
MEMBER: AGRICULTURE
PUBLIC HEALTH AND WELFARE
ENERGY AND NATURAL RESOURCES
JOINT COMMITTEE ON CHILDREN AND FAMILIES

Chairperson Kline, Vice-chairperson Carmody and ranking minority member Larkin, I thank you and your committee for working to bring tax relief to the citizens of Kansas.

I will be sharing a letter with you from Clay Center area Chamber of Commerce but first I will make a few comments making an effort not to duplicate remarks made in the Chamber letter.

Contrary to words from critics of this bill, it is not a bill that just helps the Eastern portion of the state, though that is the area of most vocal support. I have had calls from persons in agriculture production who feel it is an unfair tax that inhibits their desire to expand confinement facilities. Business with small profit margins, which are the primary businesses in my rural district, are affected more than some would think as they make building decisions. Though the numbers are few in the view of some, they are significant in small communities.

As you will learn from the letter attached to this sheet, central Kansas suffered a real setback for economic growth due to this burdensome tax on new construction. I urge you to pass HB 2056 and feel that it will receive the support of the House as a Whole when it reaches the floor.

At this time I will read the letter from Jim Beck President of the Clay Center Area Chamber of Commerce.

Thank you for your time and I will stand for questions at the direction of the chair.

Sincerely,

A handwritten signature in black ink that reads "Joann Freeborn". The signature is fluid and cursive, with a long, sweeping underline that extends to the right.

Joann Freeborn
107th District Representative



Clay Center Area Chamber of Commerce

308 Court, Depot Plaza Clay Center, Kansas 67432 Phone (913) 632-5674

Phill Kline, Chairman
House Taxation Committee
Fax #913-291-3446
Topeka, KS

RE: Sales Tax Repeal for Original Construction, HB 2056

Dear Sirs,

It is with great concern that I write this letter to the House Taxation Committee on behalf of the Clay Center Area Chamber of Commerce. As you may be aware, Clay Center houses a company, Wardcraft Homes, where homes are built in the plant and then transferred to their final destination. Wardcraft Homes plays a very vital role in the economic growth of our community.

It was partially due to the sales tax on new construction that Wardcraft Homes moved a portion of their company to Minden, Nebraska where this type of tax does not exist. We cannot afford to lose any more of this company to neighboring states as we will never receive benefits from employee salaries, sales tax on materials purchased, state income tax or the multiplier effect when salary dollars are spent locally. Clay Center City Councilman, Dan Gough is quoted as saying, "We are stifling the growth and economic development of the state of Kansas with the sales tax on new construction."

We ask that you seriously consider repealing the sales tax for original construction for the betterment of not only Clay Center but for the entire state of Kansas.

Sincerely,

Jim Beck
1995 President

BOB VANCURUM
SENATOR, ELEVENTH DISTRICT
OVERLAND PARK, LEAWOOD,
STANLEY, STILWELL, IN
JOHNSON COUNTY
9004 W. 104TH STREET
OVERLAND PARK, KANSAS 66212
(913) 341-2609



TOPEKA

SENATE CHAMBER
STATE CAPITOL
TOPEKA, KANSAS 66612-1504
(913) 296-7361

COMMITTEE ASSIGNMENTS
VICE-CHAIRMAN: ENERGY AND NATURAL RESOURCES
MEMBER: WAYS AND MEANS
JUDICIARY
MEMBER: COMMERCE, LABOR AND REGULATIONS
COMMITTEE, NATIONAL CONFERENCE ON
STATE LEGISLATURES
MEMBER: ENVIRONMENTAL TASK FORCE,
COUNCIL ON STATE GOVERNMENTS

*An Act concerning
Utilities and
long pers. prop.
used in manufacturing*

TESTIMONY FROM SENATOR BOB VANCURUM
TO
HOUSE TAXATION COMMITTEE
ON
SENATE BILL 14

RE: SUGGESTED AMENDMENT HAVING TO DO WITH TREATMENT OF
WASTE WATER GENERATED BY PRODUCTION PROCESS

I am sensitive to the need to immediately repeal the sales tax on labor used in new construction and on utilities used in manufacturing process as called for by the Governor's address last Wednesday. However, about an hour before debate on the Senate floor concerning Senate Bill 14 I learned of a problem effecting at least one manufacturer in the State of Kansas. The company's name is Flexel, Inc. in Tecumseh, Kansas. Flexel manufactures cellophane wrappers and employe 200 Kansas citizens at that plant. Part of the manufacturing process utilizes water which becomes slightly acidic. KDHE requires that waste water neutralized with soda ash and in fact this is done on a contemporaneous basis on site. There is an Attorney General's opinion having to do with salt water generated from oil production which appears to mandate an exemption on products used to treat waste water, but the Department of Revenue has stated it will not follow the Attorney General's opinion. Furthermore, the tax would continue to be in place on this one manufacturer even if this is repealed on utilities used in production for all other manufacturers.

The amendment on the attached page is intended to be very narrowly drawn in order to reverse this position of the Department of Revenue. I have no idea if the Revenue Department has taken this position with other manufacturers as far as the waste water stream. My position is that it was never the part of legislative intent. Anyway if the Committee wants to tighten this language up even more it could state that the treatment of the waste must be contemporaneous to the manufacturing process and conducted on site.

I want to thank the committee for considering this amendment that is important to jobs in the State of Kansas. In the interest of disclosure I also want to tell you that the matter was called to my attention by a partner in my law firm who apparently had the discussions with the Department of Revenue mentioned above.

*House Taxation
JAN. 20, 1995
Attachment #2*

Even though I think this is irrelevant to the good public policy of the amendment, I think the committee deserves to know that.

Sincerely,

A handwritten signature in cursive script, appearing to read "Bob Vancrum".

Senator Bob Vancrum

79-3606(n) - Suggested Revision

(n) all sales of tangible personal property which is consumed in the production, manufacture, processing, mining, drilling, refining or compounding of tangible personal property, *the treating of by-products or wastes derived from any such production process*, the providing of services or the irrigation of crops for ultimate sale at retail within or without the state of Kansas; and any purchaser of such property may obtain from the director of taxation and furnish to the supplier an exemption certificate number for tangible personal property for consumption in such production, manufacture, processing, mining, drilling, refining, compounding, *treating*, irrigation and in providing such services;

KAN BUILD, INC.

NICHOLS ROAD & HWY 31 EAST • OSAGE CITY, KS 66523 • 913-528-4163 • FAX 913-528-4795
999 N. VAN BUREN • LOVELAND, CO 80538 • 303-667-2676 • FAX 303-669-1496

January 23, 1995

Chairman Phill Kline
and Members of House Tax Committee
300 S.W. 10th, Room #170 W
Topeka, KS 66612

Mr. Chairman,

Please admit this letter as my written testimony to S.B.14. The 2.5% Gross Receipts Tax was ill conceived late in the 1992 session. The legislature was provided with unrealistic revenue figures, and was not allowed time to consider the ramifications of its actions.

This tax has caused Kansans to lose jobs. In our Industry (Pre-Site Constructed Housing) it has definitely lost 50+ in Clay Center to Minden, Nebraska, and was a strong factor in our expanding to Loveland, Colorado with 108 employees.

In spite of what the Department of Revenue says, I believe this tax is very difficult to enforce against out of state contractors, which are not audited by revenue.

In our industry, out of state manufacturers that sell direct to the public are avoiding this tax. This tax should be removed as of 1/1/95. The quicker we provide a level playing field for our states economy, for our consumers and contractors the better.

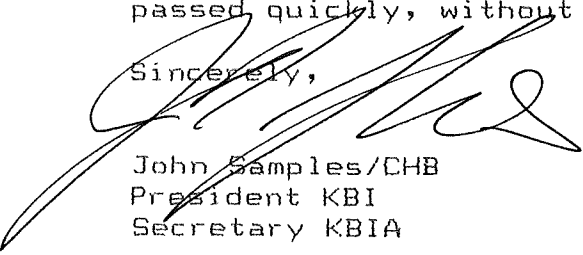
The question was raised in the hearing about move-up buyers and remodeling or upgrading. If you examine the majority of Kansas communities of 20,000 or less, new construction is the only alternative because the housing stock is 100% occupied.

As we are a Manufacturer, as well as contractor, we believe the removal of utilities used in manufacturing will help Kansas to compete with surrounding states for jobs, and will provide the level playing field we need.

Also, I want to clarify this tax is a gross receipts tax, and not a labor tax. Material is taxed at the situs rate, and the roughly 50% balance is taxed at 2.5%.

In conclusion, Kan Build, Inc. and Kansas Building and Industry Association supports S.B.14, and would hope that it be passed quickly, without amending it to death.

Sincerely,



John Samples/CHB
President KBI
Secretary KBIA

House Taxation
1-20-95
Attachment 3



Executive Offices:
3644 S. W. Burlingame Road
Topeka, Kansas 66611-2098
Telephone 913/267-3610
Fax 913/267-1867

TO: THE HOUSE TAXATION COMMITTEE

FROM: KAREN FRANCE, DIRECTOR, GOVERNMENTAL AFFAIRS

DATE: JANUARY 20, 1995

SUBJECT: SB 14, REPEAL OF THE SALES TAX ON LABOR USED
IN NEW CONSTRUCTION

Thank you for the opportunity to testify. The Kansas Association of REALTORS strongly supports the repeal of the sales tax on new construction labor.

As we have testified many times, we believe that placing a sales tax on new construction is a self-defeating effort on the part of the state of Kansas.

During the last recessionary cycle which the country experienced, one of the "signs of recovery" which the economists were all looking for was whether the number of new building permits was increasing. New home construction is considered to be one of the leading economic indicators which economists use to predict upturns and downturns in our economy.

If new home construction is an industry which historically leads the economy out of a recession, why would the state of Kansas want to do anything which will hamper that industry? How could it be justified that increasing up-front costs of a new home would somehow be good for our economy? How could the state justify running jobs out of the state at a time when our communities are trying to attract new industries?

While the true impact of the sales tax might have been blurred by the history-making low interest rates of 1993- 1994, those days have now passed, and interest rates are on the rise. The market has already started to tighten up and we do not need any additional factors to deter builders from building in Kansas or new home buyers from buying.

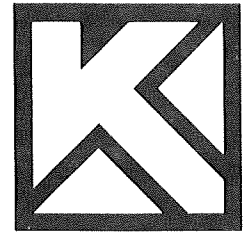
We thank you for taking this issue up as a top priority of the committee. We urge you to pass this bill out favorably as soon as possible to put Kansas on an equal footing with other states when it comes to competing for business which makes the economy move.

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

House Taxation
1-20-95
Attachment 4

LEGISLATIVE TESTIMONY

Kansas Chamber of Commerce and Industry



835 SW Topeka Blvd. Topeka, Kansas 66612-1671 (913) 357-6321 FAX (913) 357-4732
SB 14

January 20, 1995

KANSAS CHAMBER OF COMMERCE AND INDUSTRY

Testimony Before the
House Taxation Committee

by
Bob Corkins
Director of Taxation

Honorable Chairman and members of the Committee:

My name is Bob Corkins, director of taxation for the Kansas Chamber of Commerce and Industry, and I appreciate the opportunity to again express our members persistent support for the full repeal of Kansas' sales tax on original construction labor services. I also speak today on behalf of the Kansas Industrial Developers Association (KIDA) and the Construction Tax Repeal Coalition whose members -- including KCCI -- are listed on the attached sheet.

The Kansas Chamber of Commerce and Industry (KCCI) is a statewide organization dedicated to the promotion of economic growth and job creation within Kansas, and to the protection and support of the private competitive enterprise system.

KCCI is comprised of more than 3,000 businesses which includes 200 local and regional chambers of commerce and trade organizations which represent over 161,000 business men and women. The organization represents both large and small employers in Kansas, with 55% of KCCI's members having less than 25 employees, and 86% having less than 100 employees. KCCI receives no government funding.

The KCCI Board of Directors establishes policies through the work of hundreds of the organization's members who make up its various committees. These policies are the guiding principles of the organization and translate into views such as those expressed here.

KCCI and KIDA also support repeal of Kansas sales tax on utilities consumed in manufacturing processes. Since that measure is included in SB 14, I will simply refer you to my testimony presented last week on HB 2055 without elaborating further on the issue.

House Taxation
1-20-95
Attachment 5-1

KCCI opposed the creation of these taxes in 1992 and has successfully assisted in persuading the Legislature to repeal both of them on two occasions since that time. We again ask for your favorable action on these issues and we welcome Governor Graves' repeatedly voiced desire to see the taxes eliminated. Most importantly, the Governor has greatly facilitated the repeal of these sales taxes by submitting a FY96 budget which assumes they will be abolished.

I will briefly discuss the rationale for repealing the sales tax on original construction labor services.

* It harms Kansas job growth. If Kansas construction job growth over the last three years had followed the pattern of our neighboring states which do not impose this tax, Kansas today would have thousands more people employed in this industry.

* Lost job growth means lost tax revenue. If Kansas had met the regional average for construction job growth over the last two years, those extra jobs would have generated at least \$4 million in additional state income and sales taxes.

* Residential construction growth has slowed. As measured by the value of building permits issued, Missouri, Nebraska, Oklahoma and Colorado (which do not impose the tax) have experienced growth at least five times the rate of Kansas since 1992.

Furthermore, it has been a difficult tax to administer and enforce, its state tax revenue projections have always been substantially overstated, it has added millions to the cost of the State Comprehensive Highway Program, and the extent of property tax relief experienced since 1992 (a primary motivation for the creation of this sales tax) has not offset the cost of this tax to a great many businesses.

Many contend that this rationale applies equally to the Kansas sales tax on remodeling construction services. There is merit to the repeal of the remodeling tax and KCCI, for one, would support that cause. However, several policy considerations distinguish the market effects of these

... taxes and clearly point toward repealing the tax on original construction services as a higher priority.

For example, the tax on remodeling projects: 1) does not present the administrative difficulties associated with the original construction tax; 2) has not caused the loss of jobs such as those attributable to the original construction tax; 3) is typically financed (if, in fact, any portion of the project is to be financed) with the equity in the building to be remodeled; 4) is typically imposed on projects of a much lower cost than original construction; and 5) is much less likely to affect the multi-state location decisions of prospective businesses.

Another important distinction between the tax consequences of remodeling versus original construction projects was created by the Legislature last year. Substitute for SB 732 (originally introduced as HB 2736) established the "neighborhood revitalization act" which provides a local-option property tax incentive to refurbish deteriorated areas. Cities may implement this incentive by passing an ordinance which defines blighted areas wherein the value of property improvements are free from tax.

This law allows cities substantial leeway in setting the scope of the program to meet their particular needs. The boundaries of revitalization districts are set by the cities themselves in accordance with broad statutory definitions. They may choose to extend the incentive to commercial and/or residential improvements. Property taxes may be rebated for all or a portion of the value of such improvements -- for up to a maximum of ten years.

Compare the potency of this incentive against the value of a sales tax exemption for remodeling. The remodeling labor exemption would save as much as 6.9% sales tax on 60% of a typical project's cost (60% is a safe guess on the labor component of a project). However, under the city of Topeka's neighborhood revitalization incentive, a residential remodeling project would avoid 95% of the property tax on the value of the improvement for the next ten years. Furthermore,

5-3

...s certainly possible that the fair market value of the property's improvement could even exceed the cost of the project.

Again, these factors do not eliminate the economic development advantage of repealing the sales tax on remodeling labor. These considerations do, however, indicate that it does not rise to the level of priority found with either the manufacturing utility or the original construction sales tax repeal.

For these reasons, we respectfully ask your support for the bill before you today. Thank you for your time and consideration.

5-4



Construction Tax Repeal Coalition

800 S.W. JACKSON, SUITE 808, TOPEKA, KANSAS 66612 • (913) 233-0016 • FAX (913) 234-3687

American Institute of Architects in Kansas
Associated General Contractors of Kansas
Associated General Contractors, Kansas City Chapter
Atchison Area Chamber of Commerce
Blue Valley U.S.D. 229
City of Lenexa
City of Olathe
City of Overland Park
Coalition of Kansas Appraisers
Commercial Property Association of Kansas
Dodge City Area Chamber of Commerce
Electric Association of Missouri and Kansas
Finney County Economic Development Corporation
Garden City Area Chamber of Commerce
Greater Kansas City Building and Construction Trades Council
Greater Kansas City Chamber of Commerce
Greater Topeka Chamber of Commerce
Heartland Apartment Association
Heavy Constructors Association of Greater Kansas City Area
Home Builders Association of Greater Kansas City
Johnson County Board of Realtors
Johnson County Partnership for Economic Development
Johnson County Water District No. 1
Kansas AFL-CIO
Kansas Aggregate Producers Association
Kansas Asphalt Pavement Association
Kansas Association of Realtors
Kansas Building Industry Association
Kansas Cement Council
Kansas Chamber of Commerce and Industry
Kansas City, KS Chamber of Commerce
Kansas Consulting Engineers
Kansas Contractors Association
Kansas Good Roads Association
Kansas Industrial Developers Association
Kansas Land Improvement Contractors Association
Kansas Land Title Association
Kansas Plumbing, Heating, Cooling Contractors Association, Inc.
Kansas Ready-Mixed Concrete Association
Kansas Society of Land Surveying
Kansas State Building and Construction Trades Council
Kansas/Nebraska League of Savings Institutions
Labor-Management Council of Greater Kansas City
Lenexa Chamber of Commerce
Mechanical Contractors Association (Kansas City)
Mechanical Contractors Association of Kansas
Merriam Chamber of Commerce
Mid-America Lumbermens Association
National Electrical Contractors Association of Greater Kansas City
National Electrical Contractors Association, Kansas Chapter
Olathe Area Chamber of Commerce
Overland Park Chamber of Commerce
Painting and Decorating Contractors Association, Kansas City Chapter
Shawnee Area Chamber of Commerce
Sheet Metal and Air Conditioning Contractors/National Association, KC Chapter
The Builders' Association
Topeka Board of Realtors
Topeka Home Builders Association
Wichita Area Builders Association
Wichita Area Chamber of Commerce
Wichita Independent Business Association

"AN ALLIANCE OF TRADE, ECONOMIC DEVELOPMENT AND OTHER ORGANIZATIONS DEDICATED TO INCREASING KANSAS JOBS BY REPEALING THE STATE GROSS RECEIPTS TAX (SALES TAX) ON ORIGINAL CONSTRUCTION LABOR SERVICES."

5-5

THE KANSAS CONTRACTORS ASSOCIATION, INC.



316 SW 33RD ST PO BOX 5061
TOPEKA KS 66605-0061
PHONE (913) 266-4152
FAX (913) 266-6191

TESTIMONY

BY THE KANSAS CONTRACTORS ASSOCIATION

BEFORE THE HOUSE ASSESSMENT AND TAXATION COMMITTEE

REGARDING

SB 14 SALES TAX ON ORIGINAL CONSTRUCTION

Mr. Chairman and members of the House Assessment and Taxation Committee, I want to thank you for allowing me the opportunity to appear before you this morning to discuss the sales tax on labor involving original construction.

My name is Bob Totten and I am the Public Affairs Director for the Kansas Contractors Association. Our Association represents more than 330 heavy, highway and municipal utility contractor and associate member firms in the Kansas construction industry.

I am here again today to reaffirm our support to remove the 2 and a half percent sales tax on the labor involved in the construction of roads and highways in Kansas. This tax was imposed several years ago as part of the School Finance Bill. I believe the highway industry was inadvertently added to the school finance measure when it was passed.

House Taxation
1-20-95
Attachment 6-1

sales tax
page two

The tax on the construction industry raises between two and two and half million dollars. We believe with all the confusion and paperwork it has caused, it has not been worthwhile.

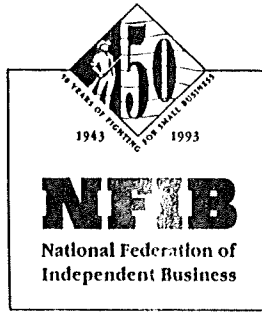
Since its inception there has been confusion on what is taxed and what is not. For example, in the department's interpretation, materials are charged at 4.9 percent and labor is taxed at 2.5 percent. In addition, the Board of Tax Appeals has ruled, the excavation of dirt is non-taxable. As you can tell, contractors have to become experts on exactly which work was done when and by whom and what rate it is should be taxed.

Secondly, sub-contractors are affected differently than prime contractors. Prime contractors who contract with the state are not affected by this tax since the state can not impose a tax on itself...however for sub contractors it is a different story. When they submit a bid or bill to a prime contractor, they must include the sales tax on labor. For a 4 million dollar job that amounts to \$100,000 in tax. If you are a prime contractor and can do the work yourself, it means you will decide to do the job with your own company instead of subbing the work to another contractor. Because of this tax, several of our contractors have been severely hurt.

page three
sales

This tax has also raised the price a highway project costs the state...since in most instances there are about 16 sub contractors on a job. That means each sub contractor has added the 2.5 percent sales tax on labor on its prices. That is added to the prime contractor's bid he submits to the state. What this means is it actually lowers the amount of work the Kansas Department of Transportation may let because the prices are artificially inflated due to this tax. What it has done is move money designated for the construction of roads and highways and through this tax put it in the state's general fund. I don't believe that is what was in mind when the highway program was passed in 1989.

Again, I appreciate the opportunity to talk to you about this matter today and urge you to abolish the tax and make the appropriate changes so the highway program is held harmless. I will be glad to answer any questions you might have.



Testimony of
Hal Hudson, State Director
National Federation of Independent Business
Before the
Kansas House Taxation Committee
on Senate Bill 14

Friday, January 20, 1995

Mister Chairman and members of the Committee: Thank you for this opportunity to appear here today. My name is Hal Hudson, and I am the State Director for the Kansas Chapter of National Federation of Independent Business (NFIB), the State's largest small-business advocacy group, with about 8,000 members who employ nearly 100,000 Kansans.

I am here today to support passage of S.B. 14, which provides an exemption of original construction labor services and certain utilities consumed in the production of property and the provision of services. Our position, very simply stated is that the removal of these taxes will result in more dollars going into construction and the creation of goods and services. By stimulating the economy through these tax reductions, the state and local taxing authorities ultimately will receive more revenues in the form of property taxes and sales taxes.

It has been suggested by some that additional exemptions be given for remodeling, repairing, or reconstruction of real property. While we do not oppose these exemptions, we believe they are subject of, or should be the subject of, other legislation.

Thank you for the opportunity to present this testimony. I will remain for questions, if any.

House Taxation
1-20-95
Attachment 7-1

ABOUT NFIB / KANSAS

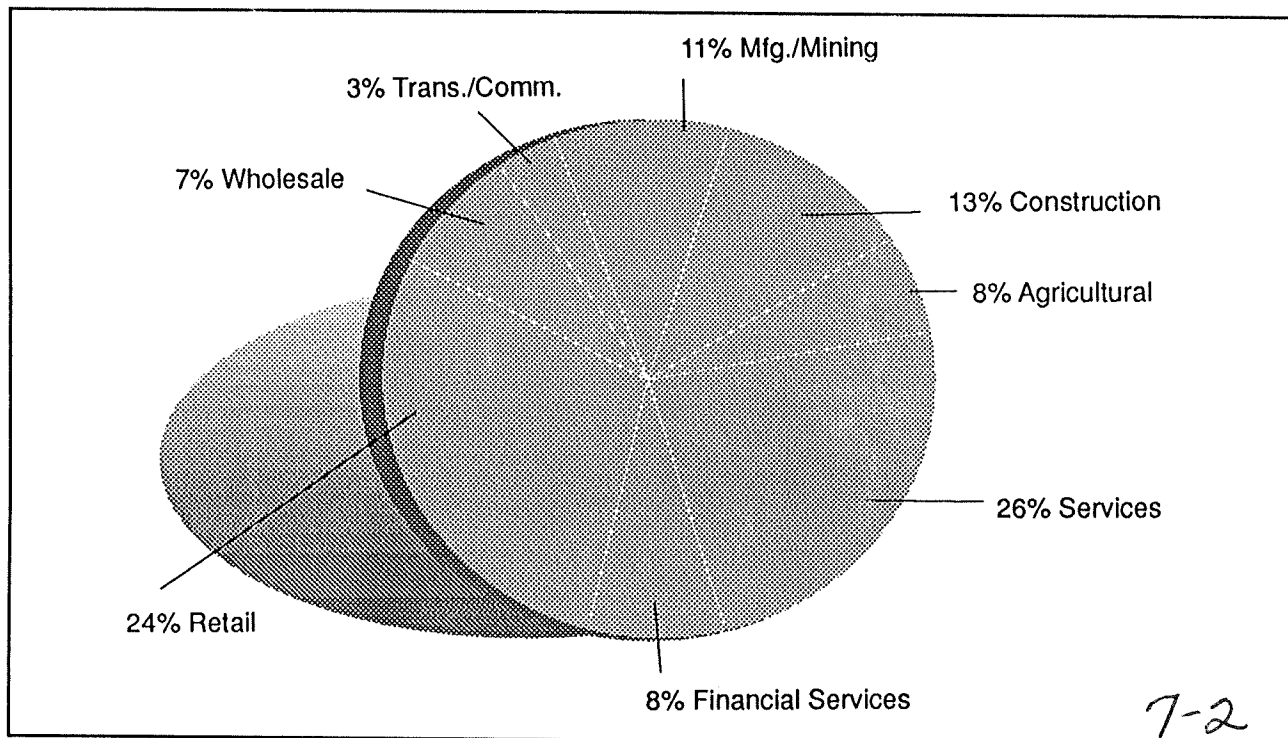
With nearly 8,000 members, the Topeka-based National Federation of Independent Business/Kansas is the state's largest small-business advocacy organization. Independent-business owners join the federation to have a greater say in the crafting of legislation and regulations that affect their lives and livelihoods.

NFIB/Kansas draws its members from all walks of commercial life: from family farmers to neighborhood retailers, from independent manufacturers to doctors and lawyers, from wholesalers to janitorial service firms.

Each year NFIB/Kansas polls its diverse membership on a variety of issues. The federation uses the poll results to form its legislative agenda, aggressively lobbying in support of positions approved by majority vote.

Because policy is determined by direct vote of the membership rather than by a steering committee or board of directors, NFIB/Kansas lobbyists have exceptional credibility as spokespersons for the entire small-business community. Rather than represent the narrow interests of any particular industry or trade group, NFIB/Kansas promotes the consensus view of small-and independent-business owners from throughout the state.

N F I B / K A N S A S M E M B E R S H I P by Industry Classification



NFIB Federal Legislative Office
600 Maryland Ave. Sw, Ste. 700
Washington, DC 20024
(202) 554-9000

3601 S.W. 29th St.
Ste. 107
Topeka, KS 66614
(913) 271-9449

NFIB Membership Development
53 Century Blvd., Suite 205
Nashville, TN 37214
(615) 872-5300

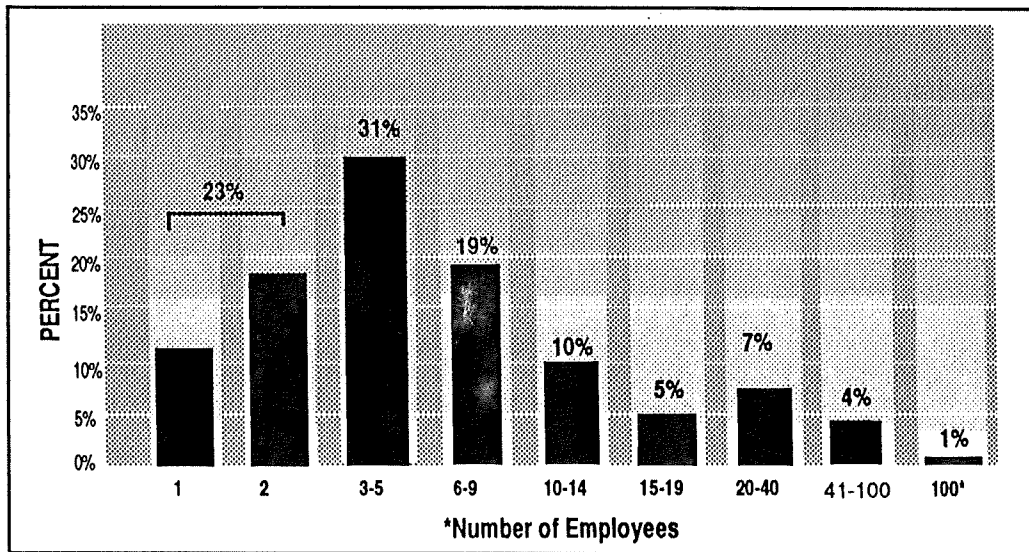
NFIB
National Federation of
Independent Business

N F I B / K A N S A S M E M B E R S H I P P R O F I L E

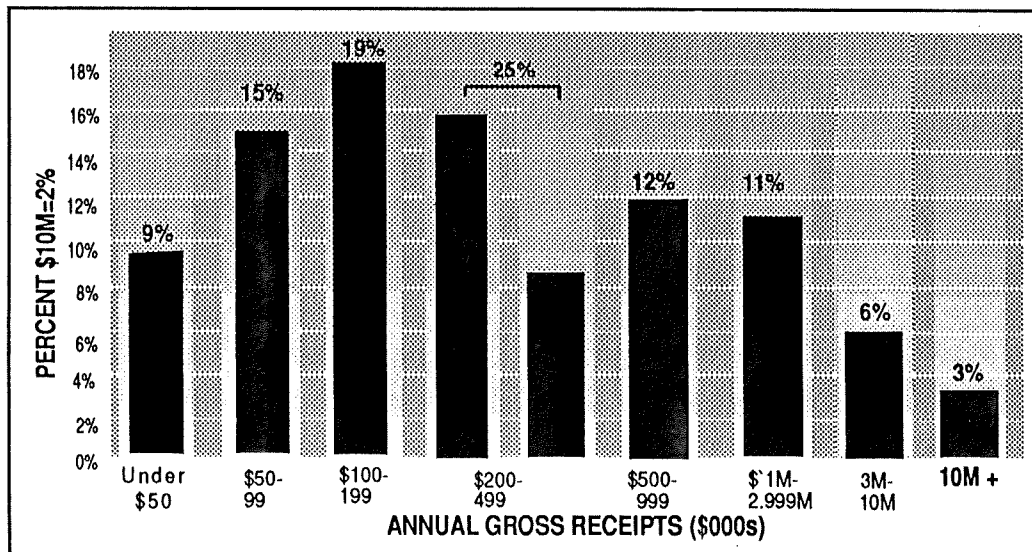
NFIB/Kansas represents the entire spectrum of independent business, from one-person "cottage" operations to quite substantial enterprises.

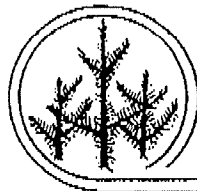
The typical NFIB/Kansas member employs five workers and rings up gross sales of about \$270,000 per year. In aggregate, the organization's members employ nearly 92,000 workers.

N F I B / K A N S A S M E M B E R S H I P by Number of Employees



N F I B / K A N S A S M E M B E R S H I P by Annual Gross Receipts





HERMES LANDSCAPING

January 19, 1995

Representative Phill Kline
Chairman, House Taxation Committee
State Capitol Building, Suite 170-W
Topeka, KS 66612-1504
Fax: 913-296-3446

Dear Phill:

Thank you for your letter and your copy of the amended Senate bill and supplemental note. The purpose of my writing this is to encourage you and your committee to support this amendment dealing with tax exemptions for nurseries. Generally, all farming operations are exempt from certain taxes except where the exemptions are denied to a few by a narrow definition by the Department of Revenue.

The following statutes exempt farmers for farm machinery and equipment: KSA79-201J - Property Tax, KSA79-3606 - Sales Tax.

I will certainly regard it as a major reconciliation of a mistake if the amendment, as it stands, is successfully enacted. I would, however, like to suggest that if it is possible to include nurseries in the definition under 79-201J without putting the existing amendment at risk, it should be done. This would be more consistent with the current statutes because nurseries fall in the definition of farming as well under the property tax statute as they do under the sales tax statute. I realize inconsistencies in tax laws are somewhat the norm, but I do think that if there is any way to include nurseries under 201-J, it would be a better bill. Just for example, nurseries and horticultural activities are currently included under the inheritance tax statute KSA79-1545 and there are numerous instances where nurseries and greenhouses are defined as farming purposes.

I am enclosing a copy of a testimony from March, 1993 as it related to Senate Bill 99. If I may be of any help in testifying or otherwise, please call me either at work (913-888-2400) or home (913-648-0158).

Thank you very much for your support.

Very truly yours,

John T. Hermes
C.E.O.

HERMES LANDSCAPING, Inc.

House Taxation
1-20-95
Attachment 8-1

"A Growing Tradition in Kansas City since 1965"

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TESTIMONY FOR HEARING ON SENATE BILL 99

MARCH 9, 1993

TOPEKA, KANSAS

11:00 A.M.

My name is John T. Hermes. I am with Hermes Nursery in Johnson County, Kansas. We have been in business in Johnson County since 1965.

I am here today to testify on behalf of the nursery industry in order to help correct some unfair practices that result in discrimination against our industry and which are proposed to be corrected in Senate Bill Number 99. Certain exemptions for farm machinery, equipment, and parts are granted to the farming industry under KSA 79-3606. Under another regulation (92-19-39) the exemption is denied to our industry. It, 92-19-39, states in part, "nor does farming or ranching include such commercial operations as a floral shop, turf farm, or nursery, to the extent such floral shop, turf farm, or nursery primarily cultivates products intended to be of an ornamental or decorative nature". While this regulation is not specifically on point in denying the exemption to the nursery, the department

of revenue in fact does deny the exemption to our industry by policy. I believe to treat the nursery industry in this manner is inconsistent with the recognition of nurseries as farming operations in the vast part of the United States. In many of the Kansas Statutes, horticulture and nurseries are defined as farming. For the narrow purpose of unfairly denying the nursery industry the exemption the department has resorted to this regulation number 92-19-39 to insert a definition of nurseries which excludes them from benefiting in this sales and use tax exemption. This isolated definition is totally inconsistent with the rest of the Kansas statutes.

Example: KSA 79-1545 in part, " (5) "Farming purposes" means:

- (A) Cultivating the soil or raising or harvesting any agricultural aquacultural or horticultural commodity including the raising, shearing, feeding, caring for, training, and management of animals on a farm or aquatic plants and animals in an aquaculture operation;
- (B) handling, drying, packing, grading, or storing on a farm or aquaculture operation any agricultural, aquacultural or horticultural commodity in its unmanufactured state, but only if the owner, tenant, or operator of the farm or aquaculture operation regularly produces more than 1/3 of the commodity so treated; and
- (C) the planting, cultivating, caring for or cutting of trees,

or the preparation, other than milling, of trees for market."

Most nurseries and greenhouses in Kansas, in fact, know they are widely recognized as farming operations and are availing themselves of the tax exemption. It is upon audit that the department of revenue collects these taxes plus penalties and interest. In discussions with the department of revenue, they have argued that they are justified in denying these exemptions to this industry because landscape, horticulture, etc. are not food crops. That same argument could be applied in part or in total to such crops as the following:

- Corn used for ethanol production for fuel
- Soybeans used extensively for plastics and coatings
- Christmas trees now specifically granted the exemption and clearly not a food crop

Grower cash receipts for nursery, greenhouse, and turf grass agriculture totalled \$8.4 billion in 1991, thus making it rank sixth among all commodity groups. It is nearly 11% of all farm crop cash receipts. Farm cash receipts for nursery and greenhouse crops in 1991 exceeded receipts for all food/grain crops by \$1.6 billion. Nursery and greenhouse receipts were

also 67% higher than the combined value of all sugar and tobacco crops. I would like to point out the following:

1. The U.S. Department of Agriculture regularly includes nurseries in its census reports, does extensive research on nursery crops, and regulates its trade as it does other crops.
2. The Environmental Protection Administration recognizes nurseries in its regulation of soil pollutants.
3. The Internal Revenue Service recognizes nurseries as farming operations by its allowance of certain accounting methods generally available to farmers.
4. USDA Economic Research Service recognizes nurseries as farming operations.

Among crop categories, only soy beans with a cash value of \$12.4 billion and corn valued at \$10.1 billion outranked nursery and greenhouse crops. Three livestock categories: cattle, dairy, and hogs also produce more farm income. Nursery/greenhouse crops now rank sixth among all farm commodities.

The Kansas Department of Agriculture includes nurseries in its

regulation and inspection processes. The committee of Kansas Farm Organizations have unanimously recommended support of Senate Bill Number 99 and we urge your favorable consideration on its outcome. Thank you.

**House Committee on Assessments and Taxation
January 20, 1995**

**Testimony of
Charles R. Warren, Ph.D., President, Kansas, Inc.**

Repeal of the Sales Tax on Construction

The Kansas, Inc. Board of Directors has taken a formal position in support of the repeal of the tax on labor services for original construction. This tax was enacted at the midnight hour in 1992 as part of the school finance reform package. It is a disincentive to economic development. It was and remains today an unwise tax that has produced little revenue to the state, especially compared to the economic harm it has caused.

The tax affects our competitiveness as a location for business and for residential development. It affects those areas of the state that operate in a bi-state economic region, but it also affects all communities in Kansas. There are two major challenges for almost all Kansas communities seeking economic stability and growth. One is the availability of skilled labor, and the second is the availability of affordable housing. These issues override almost all other concerns in community economic development.

A sales tax on new construction adds further costs to the price of housing. Housing construction costs are already excessive given the increases in interest rates we have seen in 1994 and are likely to continue to see in 1995. Lumber prices are rising, as are the cost of other building materials. The state should not add its own cost barriers to the development of new housing. The revenue derived from this sales tax is not sufficient to merit its retention, in light of the damage it does to our competitiveness and to the construction industry of Kansas -- a major source of employment and economic stimulus.

On behalf of the Board of Directors of Kansas, Inc., I urge the committee to repeal the sales tax on labor services for original construction.

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TOPEKA, KANSAS 66601-0237

MEMORANDUM

TO: MEMBERS OF THE HOUSE TAXATION COMMITTEE

FROM: ALAN F. ALDERSON, ATTORNEY, HOME BUILDERS ASSOCIATION
OF GREATER KANSAS CITY

RE: SENATE BILL NO. 14 (As Amended By Senate Committee of
the Whole)

DATE: JANUARY 20, 1995

I am presenting this written testimony today on behalf of the Home Builders Association of Greater Kansas City to urge you to restore the sales tax exemption of original construction labor services that existed prior to the 1992 legislative session. I have been working with the Home Builders Association of Greater Kansas City since immediately after the passage of 1992 House Bill No. 2892 and have participated in a number of meetings in which contractors and representatives of the Kansas Department of Revenue have been present. My involvement with the original construction exemption, however, dates back to 1978 when I first went to work for the Kansas Department of Revenue as a sales tax attorney -- shortly after the legislature had restored the provisions of the labor services subsection of the Kansas sales tax law after it had been stricken down by the Supreme Court as unconstitutionally vague. In addition, I have discussed this topic in seminars I have presented two or three times a year for the last 7 or 8 years for the National Business Institute.

I am of the opinion that the imposition of sales tax on original construction labor services has created more difficulties for contractors than the amount of revenue being collected could ever possibly justify. A number of the difficulties created or exacerbated by the imposition of the 2½% tax on original construction labor services are as follows:

1. By interpretation of the Department of Revenue, professional services, such as real estate commissions, so-called professional fees and land costs are not considered to be included within the taxable service base. However, it has been determined that builder's fees are not considered to be within the ambit of "professional fees."

Neither profit nor overhead are excluded from the sales tax base and, while I do not quibble with this interpretation, the Director of Taxation has ruled that items such as building permits and sewer hook-up fees are includable in the sales tax base. I find it very hard to distinguish between other non-service items, such as real estate commissions and professional fees and those items that the Director of Taxation considers to be part of the base.

Also troubling is the attempted distinction between excludable and includable professional fees. The Director contends that architecture, engineering or surveying performed by a contractor who also performs taxable services are not excludable from the tax base. Would these services be excludable if performed through a separate corporation?

2. Although I would not argue with the Director's interpretation of the law in this regard, the contractor also must be aware that travel expenses, per diem expenses, the purchase, lease or rental of machinery and equipment, consumable supplies such as form lumber, sandpaper, tools and other equipment are considered to be a part of the tax base. All in all, trying to make sense out of the elements that are required by the Department of Revenue to be included in the base for sales tax purposes is unbelievably confusing for contractors.

3. To further compound the problem, there are certain of the elements of a sales tax base that can be excluded by contractor who segregates the payment of certain fees and expenses and makes those acquisitions or pays those expenses through a separate corporation in which there are no employees performing actual labor services. Obviously, only the larger construction companies can afford to create these separate corporations for the purpose of shielding non-labor items from the tax base. The savings that can be obtained through the creation and operation of these separate corporations makes it worthwhile for the larger contractors, however. This works a discrimination against the small contractors subcontractors who cannot afford to operate under multiple corporate shells.

4. The larger contractors are also in a position to build spec homes they own themselves to shield original construction from sales tax. Sales tax would only apply to services performed for sale at retail and, just as if you set out to build your own home, a contractor can do the same thing if he structures his financing properly. Obviously, not all contractors are in a position to take advantage of this type of arrangement.

5. The Department of Revenue has agreed that the Bernie's Excavation case applies to allow bifurcation of certain types of contracts. In Bernie's, the Kansas Court of Appeals upheld a Board of Tax Appeals decision in which an excavation was allowed to segregate his billings between taxable and non-taxable

services. The Court -- correctly, I believe -- held that an excavation contractor is actually performing two services, under certain circumstances: (1) The non-taxable service of digging a ditch, for example, and (2) the taxable "installation" of pipe. The Court said that, as long as the Contractor properly segregates his billing for the two services, the performing of the non-taxable service does not have to be included in the taxable portion of the service base.

While the enactment of the tax on original construction labor services does not affect the Court's decision in Bernie's, the Department of Revenue is unwilling to extend the ruling in Bernie's beyond its' application to excavation contractors. There are other situations in which it is clear that a contractor may be performing services which could be segregated into taxable and non-taxable components. The Department has not, as yet, extended the logic of Bernie's to the bifurcation of similar types of contracts. I see no reason why those contractors who can afford to have multiple corporations couldn't have the nontaxable clean-up work performed by a corporation other than the one that is performing taxable labor services in order to avoid the Department of Revenue's refusal to extend the application of Bernie's to services other than excavation.

6. The situation that has occurred in Johnson County is of particular concern to subcontractors because, under the new law, a Kansas contractor can hire a Missouri subcontractor at a savings. This is true because there is no local use tax in Kansas. Therefore, a Missouri subcontractor can undercut the bid of a Kansas subcontractor under identical job specifications because the Kansas subcontractor would have to bid the job with local sales tax.

I attended a meeting in Overland Park shortly after the 2½% tax was passed, in which I overheard a contractor indicating to another that he would definitely begin hiring Missouri subcontractors because the savings of 2% off the top on a job of any magnitude would make it worth his while. This has created a discriminatory situation under which Kansas subcontractors have been the losers.

These are only some of the problems that are now being encountered by contractors. Compared to the problems it causes, the tax collection under this newly imposed tax has been very minimal. On behalf of the Home Builders of Kansas, I urge you pass Senate Bill 14, as amended.

Heavy Constructors



The Heavy Constructors Association

of The Greater Kansas City Area

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FAX TRANSMITTAL

January 19, 1995

NO. OF PAGES: Two

The Honorable Phill Kline
Chairman, House Taxation Committee
Room 170-West
Statehouse
Topeka, Kansas 66612

Dear Chairman Kline:

I have just received notice that the House Taxation Committee will consider testimony tomorrow, January 20, 1995, on Senate Bill 14; an act relating to sales taxation; exempting sales of original construction labor services. Due to a prior business commitment, I will unfortunately be unable to appear before the Committee to testify on the measure. I would therefore appreciate the opportunity to submit the following comments regarding Senate Bill 14.

I am the Assistant Executive Director of the Heavy Constructors Association of the Greater Kansas City Area. The Association represents over 150 Heavy, Highway and Utility construction firms and affiliated companies in the Kansas City construction industry.

The Heavy Constructors Association requests favorable consideration of Senate Bill 14 by the House Taxation Committee, repealing the sales tax on original construction labor services. The tax we believe, has increased project costs at both the state and local level as the cost of the State-levied 2.5 percent tax (as well as any local-levied sales tax) is passed on to the project owner. If the project being constructed is private, such as a subdivision, the cost is ultimately borne by the purchaser of a home in the subdivision. If the project being constructed is a public project,

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The Honorable Phill Kline
January 19, 1995
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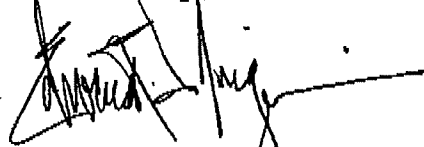
such as water transmission lines, waste water lines, roadways or bridges, the cost is ultimately borne by the public at large.

The sales tax has also resulted in a transfer of revenue from the State Highway Fund to the State General Fund. Subcontractors employed on Kansas Department of Transportation projects are required to pay the tax on their labor services. As each subcontractor on a project factors in payment of the tax into the price they submit to the prime contractor, those prices in turn are reflected in the prime contractor's bid submitted to the State. This results in a movement of funds from the State Highway Fund to the prime contractor, to the subcontractor, and finally into the State General Fund. This in effect, reduces the amount of work which can be accomplished with available revenues.

To reiterate, we support passage of Senate Bill 14, and request its favorable consideration by the House Taxation Committee.

I appreciate this opportunity to submit these comments on the behalf of the members of the Heavy Constructors Association of the Greater Kansas City Area.

Sincerely,



Edward R. DeSobigne
Assistant Executive Director

ed\kstaxcom.119

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