

MINUTES OF THE SENATE COMMITTEE ON LOCAL GOVERNMENT.

The meeting was called to order by Vice Chairperson Marian Reynolds at 9:00 a.m. on February 9, 1995, in Room 531-N of the Capitol.

All members were present except: Senators Downey and Parkinson

Committee staff present: Mike Heim, Legislative Research Department
Theresa Kiernan, Revisor of Statutes
Shirley Higgins, Committee Secretary

Conferees appearing before the committee: Janet Stubbs, Kansas Building Industry Association
Chad Hainline, Home builder, Topeka
Don Moler, League of Kansas Municipalities
Anne Speiss, Kansas Association of Counties
Gary Pashman, Topeka Home Builders Assn.
Senator Alicia Salisbury
Patrick Walters
Marge Schnacke, Landowner, Topeka

Others attending: See attached list

The minutes of February 7 were approved.

SB 118--Requiring fiscal notes for certain legislative bills, city ordinances and county resolutions.

Janet Stubbs, Kansas Building Industry Association, testified in support of the bill. (Attachment 1)

Chad Hainline, a Topeka home builder, followed with further testimony in support of **SB 118**, discussing the ramifications of local government codes. His business consists mainly of constructing low income housing. He stated that in three years, the price to construct the same house has increased \$3,000 to \$4,000 due to the imposition of these new building codes. As a result, he has had to eliminate such things as a window or a range to keep the price affordable for low income owners. Also, affordability is an issue with a \$200,000 home where such codes as one for wider sidewalks to accommodate the width of two wheel chairs involve an increase in expense for the homeowner. Most of the codes are unnecessary and just create extra expense.

Senator Ramirez commented that the majority of these requirements are there to protect the homeowners. He also raised the question as to who would pay for the preparation of the analysis of the long-range impact of a bill on the cost of housing.

Senator Reynolds asked Ms. Kiernan to explain the intent of the bill. Ms. Kiernan explained that Section 1 of the bill requires that when the budget is prepared, it must include a long-range analysis of the impact on the cost of housing. Sections 2 and 3 require that a governing body prepare a statement on the long-range impact on the cost of housing of an ordinance or regulation at least 30 days before adopting the ordinance or regulation.

Senator Reynolds called attention to written testimony submitted by Karen France, Kansas Association of Realtors, in support of the bill. (Attachment 2)

Don Moler, League of Kansas Municipalities, testified in opposition to **SB 118**. (Attachment 3) He opposes it as an example of an unfunded mandate as there is no mechanism in place in cities and counties to do the study of the long-range impact on the cost of housing. Furthermore, most local governments work with low income housing at present.

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON LOCAL GOVERNMENT, Room 531-N Statehouse, at 9:00 a.m. on February 9, 1995.

Anne Speiss, Kansas Association of Counties, gave further testimony in opposition to the bill. She stated she echoes the comments of Mr. Moler. She contended there are other ways to achieve the intent of the bill than a long-range impact study which would be a burden on counties because of the lack of staff to do the study. She is sympathetic with the concerns expressed, but feels another means should be found to address the problem. She will submit written testimony at a later date. (Attachment 6)

Gary Pashman, President of the Topeka Home Builders Association, testified in support of **SB 118**. In his opinion, there is a need for long-range impact studies to determine how a proposed new law will affect the group involved. It should be determined that the law is actually beneficial and done with common sense. The burden of new laws can be passed on to the consumer by the home builder, but the question should be, how much does the Legislature want to pass on to the consumer? He feels other factors already make housing construction expensive and asked that more expense not be added by allowing uninvestigated new regulations which many times are unnecessary.

Senator Ramirez asked Mr. Pashman if these problems with regulations could be resolved with local officials. Mr. Pashman responded that sometimes this is possible, but once it's a law, there is no choice even if the regulation does not make good common sense. The hearing was concluded with comments by Senator Tillotson that consideration of the impact should already be being done without a bill.

SB 158--Concerning drainage districts; relating to no-fund warrants.

Senator Salisbury testified in support of the bill which she feels is necessary because of the potential liability of no-fund warrants. The bill would require a governing body to go before the State Board of Tax Appeal before it could create no-fund warrants. She introduced Patrick Walters who presented testimony for Frank Dugan who was not able to attend this hearing. (Attachment 4) Mr. Walters called attention to a copy of the Attorney General's opinion in connection with Mr. Dugan's testimony. (Attachment 5)

Senator Feleciano suggested that, instead of approval by the State Board of Tax Appeal, approval be kept at the local level through such means as publication in a local newspaper and going to the vote of the people.

Marge Schnacke, a Topeka landowner, testified in support of the bill or any immediate help to prevent taxes in drainage districts from going up further. She supports the concept of a notice of meetings of the governing body of a drainage district before no-fund warrants are issued. She feels the general public is not aware of the no-fund warrants and their effect of raising landowners taxes, and something must be done soon to halt further increases without notice. With this, the hearing on **SB 158** was concluded.

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

The next meeting is scheduled for February 14, 1995.

SENATE
LOCAL GOVERNMENT COMMITTEE

February 9, 1995

CHAIRMAN PARKINSON AND MEMBERS OF THE COMMITTEE:

My name is Janet Stubbs appearing today for the Kansas Building Industry Association in support of SB 118.

In 1991, then Secretary of HUD, Jack Kemp, presented a report to former President George Bush entitled, "**Not in My Back Yard**" **Removing Barriers to Affordable Housing**. This report was a product of a 22 member advisory commission chaired by former Governor Thomas Kean of New Jersey.

I would like to quote you from Mr. Kemp's letter of transmittal of the report to Mr. Bush.

"The Commission's disturbing conclusion is that exclusionary, discriminatory, and unnecessary regulations constitute formidable barriers to affordable housing, raising costs by 20 to 35 percent in some communities." He continues, "The Commission's report is a call to action--action by Federal agencies, State and local governments, and private citizens that will enable builders, nonprofit groups, and others to create affordable housing. I pledge that the Department of Housing and Urban Development will do its part to reduce regulations and expand housing opportunity for American families."

Recommendation 6-1 of the report "strongly recommends that the Congress amend the National Affordable Housing Act of 1990 to authorize HUD to condition assistance to State and local governments based upon their barrier-removal strategies".

Recommendation 6-6 "strongly recommends that a Housing Impact Analysis be required of every Federal agency before it promulgates any major rule or rule revision. As an initial step, procedures for the Analysis should be implemented administratively."

In 1993, Senator Bud Burke announced his support and cooperation with my Association by the formation of Kansas Barriers to Affordable Housing Task Force. The report of that group was made available early in the 1994 Session and a copy was given each of you the first week of the 1995 Session.

In announcing the formation of the Task Force, Senator Burke commented, "It is very important that the public and private sectors work together to identify ways to reduce construction costs and work to make housing more affordable for all Kansans. Kansas families should have the opportunity to own their own homes; and economically, a strong home construction industry is key to the vitality of this state."

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The Kansas Task Force looked at three separate elements which affect housing costs: the costs associated with sub-division development, the actual construction of the structure, and the financing.

Developers are finding their phase of the process costly due to excessive regulations and time delays in the permitting process. This added expense to the developer equates to added cost of the final product. In some instances, it means the difference between the success or failure of a development.

SB 118 will not directly address the problem of the long delays during the permitting process. It will require that units of government assess the result of their actions. It does not prevent them from taking legislative action or passing regulations. It does require them to be aware of and consider the effects of their actions.

Mr. Chairman, there has been and still is a great deal of rhetoric about "unfunded mandates" of federal government to state government, etc. We believe government "mandating" unreasonable or exorbitant regulations on the private sector is just as distasteful. Perhaps it is a question of whether you are on the issuing or receiving end of the action.

Let me give you just a few examples of the reason for our ire:

1. After passage of SB 23 in 1992, regulations were passed by a State agency which the city of Salina said would add \$10,000 to the cost of a house in one area of their city. After lengthy negotiation with the agency, we were able to get the regulations modified to a form which could better serve the consumer.

2. In one city, we are currently being forced to litigate a case in which a study has revealed a fee being charged which is 40% more than the cost of the service provided. Our National Association of Home Builders has joined in that lawsuit to assist financially and with legal experts.

3. The KDHE currently prohibits placement of a manhole more than 400 feet apart and each must be in a straight line from the last so you can see from one to the other. With today's technology, this is unnecessary and adds \$1500 to \$2,000 for each manhole.

4. One major city in the State has adopted a plumbing code which is obsolete but is more labor intensive. It requires water pipes which are oversized due to the new federally mandated flow restricted plumbing devices. Larger, heavier pipe adds to the cost of the house without a health & safety reason for doing so.

5. Currently the KCC staff has recommended that Kansas adopt the MECH 93 Energy Code for this state. We have written strong objections due to the increased cost to the structure without the accompanying benefits to the home buying public. That dispute has yet to be resolved.

Our National Association estimates that on an average, \$2400 will be added to the cost of a \$100,000 residential structure with the adoption of this code. Our estimates for Kansas are slightly less than that.

When housing costs escalate we price people out of the market. The industry has continued to express this fact to the Legislature and the public since the passage of the gross receipts tax by the 1992 legislature. Government continues to voice support for "affordable housing" for Kansas citizens. We have established a Division of Housing within the Department of Housing and Commerce to reflect this support. Yet towns throughout Kansas continue to experience severe housing shortages.

The Kansas Building Industry Association continues efforts to reduce the cost of safe and affordable housing for the consumer. This is an industry which is extremely diverse. It is often viewed as a source of revenue for government searching for income which does not require taxation of the general public. Increased fees to the industry results in added expense for a specific segment of the population, new home buyers and/or individuals trying to maintain or improve their homes.

We believe that SB 118 would require the members of the bureaucracy to educate themselves on issues which affect the lives of their constituency before taking action which is costly and without value.

Mr. Chairman, we urge your favorable consideration and action on BS 118.



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TO: SENATE LOCAL GOVERNMENT COMMITTEE
FROM: KAREN FRANCE, DIRECTOR, GOVERNMENTAL AFFAIRS
DATE: FEBRUARY 9, 1995
SUBJECT: SB 118, HOUSING IMPACT STATEMENTS

Thank you for the opportunity to submit written testimony. I apologize for not being present to testify in person. However, I have an unavoidable schedule conflict which prevents me from appearing in person.

The Kansas Association of REALTORS® supports SB 118. We have had a longstanding position opposing counter-productive taxation, governmental guidelines, regulations, rules and procedures which increase consumer cost.

This legislation provides a mechanism which will create an awareness of the potential for negative impacts on housing at the state and local level. The activity in the residential housing market is one of the leading economic indicators which economists look examine in order to determine the health of the economy. If we can put in place a method for preventing negative impacts on this crucial portion of our economy, we will have done the citizens of this state a great service. We ask that you recommend this bill favorable for passage.

Thank you again for the opportunity to present written testimony.

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**League
of Kansas
Municipalities**

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LEGISLATIVE TESTIMONY

TO: Senate Local Government Committee
FROM: Don Moler, General Counsel
RE: Opposition to SB 118
DATE: February 8, 1995

First I would like to thank the Committee for allowing the League to appear today in opposition to SB 118. The League is specifically opposing new Section 2 of SB 118 which would impose upon all 627 cities in the state a requirement that at least 30 days prior to adopting any ordinance, resolution or regulation, the governing body of a city shall prepare a statement on the immediate and long-range impact such ordinance, resolution or regulation would have upon the cost of housing in the city. Such statement would then be available for a public inspection. We believe this is yet another example of an unfunded state mandate upon local government which will simply serve to further complicate and inhibit the ability of cities in Kansas to serve the public.

We must always keep in mind that the cities in Kansas vary in population from the City of Wichita, population 304,011 all the way down to Freeport, Kansas, population 8. There are only 33 cities in the great State of Kansas which have a population in excess of 10,000. Thus, far and away the large percentage of cities in Kansas have virtually no city staff. Every time new requirements are placed upon their backs, local governments, especially smaller cities, become more and more burdened and are less able to carry out the core functions of local government. We believe this is an unnecessary requirement which will not serve the public interest and which will in fact further complicate and slow local government and make it more difficult for cities of all sizes to accomplish the public's business.

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2-9-95
Attachment 3*

TESTIMONIAL

Senate Bill No. 158: by insertion of Statute, K.S.A. 79-2939 (see lines 29 & 30 thereof) and deleting a three line exception (see lines 30 thru 32 thereof); this bill will have the net effect of transforming K.S.A. 24-133 from a Statute, which, in its present form, is confusing, purposeless and inadequate and which, in its amended form, is meaningful, appropriate and effective in dealing with the subject matter assigned to it; being the procedure applied to the issuance of no-fund warrants by a governing body within the State of Kansas.

It may not be necessary for the State Board of Tax Appeals to approve the issuance of all no-fund warrants but conversely, the Board does have a substantial responsibility to withhold approval of the issuance of no-fund warrants by a governing body for emergencies in an amount patently excessive and unreasonable by any standard supplied thereto. This is accomplished by adding the provisions contained in K.S.A 79-2939 to Senate Bill No. 158.

A case in point is as follows:

The governing body of a Drainage District in the State of Kansas has, recently, within a two year period, (1992 & 1993) issued a \$355,000 in no-fund warrants to be repaid over fifteen years and carrying the prevailing interest rate, thereby resulting in a repayment cost, combining principal and interest of \$585,000. The taxes based for this Drainage District is approximately \$1,340,000, meaning the District has borrowed 44% of its tax base, by issuing these warrants and the District is currently contemplating coming back to the trough for an additional \$650,000. The Bond Attorney, employed by the Drainage Board has advised the Board that there is no limit as to dollar amount of no-fund warrants they can issue. Even our states former Attorney General operated without the benefit of legislative clarification as to what constitutes being an allowable

dollar amount of no-fund warrants that can be issued. The current limitation on issuance of general obligation bonds by a governing body is 3 1/2% of its tax base.

Keep in mind, if you will, Senate Bill No. 158, before you, is not to introduce new legislation or a new law. The Statutes are already in force (K.S.A. 79-2939 & K.S.A. 24-133) and for deletion of certain wording from K.S.A. 24-133 that has rendered the Statute ineffective nor will this Bill serve to create a Board of Tax Appeals. We already have one.

For some presently unjustifiable reasoning, out of the past, K.S.A. 24-133, by the wording contained in the last three lines, has effectively removed itself from any involvement in the issuing of no-fund warrants. Senate Bill No. 158 corrects this exclusion by deleting these lines. Why is approval advisable? It may not have been in the past when the issuance of no-fund warrants was, as the name implies to satisfy minimal financial requirements, so minimum as not being worthy of consideration by Board of Tax Appeals and hence presented no requirement for notice prior to issuance or any limitation as to amount thereof.

This is far from the reality of the present day when this exception, has, in effect, ballooned to unbelievable proportions, by responding to some potential whim of the governing body of any Drainage District no matter how inept these entities might be or how unqualified they are to resolve decisions of this magnitude. Why not go the "no-fund warrant route"? There is no statutory limitation as to amount thereby giving it all the semblance of a huge blank check going back in the past when K.S.A. 24-133 became law, our Federal Government was picking up the tab, so to speak, through the U.S. Army Corps of Engineers and the Soil Conservation Service, etc., for any and all large expenses incurred in maintaining levy systems along navigational rivers and streams, consequently, most expenditures by Drainage Districts were to satisfy annual

maintenance upkeep requirements. When extensive damage occurred, primarily due to flooding in large proportions, Drainage Boards notified the Corps of Engineers and a major portion was taken care of. This is not so today. the Federal Government has pulled in its horns primarily because for example: installation of a levy system that cost \$200,000 to install in 1945 would, fifty years later, cost \$12 million to replace. Drainage Districts without a huge tax base had to be assisted on a large scale by the Federal Government or go bankrupt.

So this is where we are today. Our state needs legislation which will be provided by Senate Bill No. 158. The need is critical. Please, through your action today allow the Senate to act affirmatively on Bill No. 158. Thank you for your kind attention.

Members of the Committee:

The time is now to act on this matter. The governing body of the State of Kansas, the State Legislature, should turn off the spigot to other governing bodies throughout the State from taking advantage of this existing flaw in the Legislature's overall regulatory system. Property owning taxpayers of this state are entitled to the protection this act will assuredly provide.

Respectfully submitted:

Frank Dougan



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

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January 18, 1994

The Honorable Doug Mays
State Representative, 54th District
State Capitol, Room 426-S
Topeka, Kansas 66612-1504

Re: Drainage and Levees--General Provisions--No-fund
Warrants for Emergencies; Procedure

Taxation--Miscellaneous Provisions--No-fund
Warrants; Issuance

Dear Representative Mays:

On behalf of one of your constituents, you request our opinion regarding application for and issuance of no-fund warrants by a drainage district under K.S.A. 24-133.

The first question raised is whether specific no-fund warrants were issued in compliance with the law. We have not been given sufficient facts to address this question.

The next question raised is whether and what type of notice is required to be given landowners when a drainage district proposes to issue no-fund warrants. K.S.A. 24-133 provides in part:

"The governing body of any drainage district may issue emergency no-fund warrants of the drainage district to pay the costs and expenses resulting from an emergency within the district. . . .

"The governing body shall levy a tax at the first tax levying period after the issuance to pay the emergency no-fund warrants and interest thereon. The levy shall be in addition to all other levies authorized or limited by law. Emergency no-fund warrants shall be issued,

*Senate Local Gov't
2-9-95
Attachment 5*

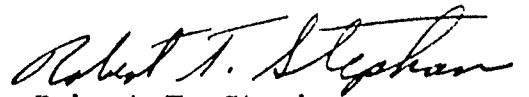
registered, redeemed and bear interest in the manner and in the form prescribed by K.S.A. 79-2940, except they shall be issued without the approval of the state board of tax appeals and shall not bear the notation required by K.S.A. 79-2940."

This statute grants to drainage districts authority to issue no-fund warrants independent of K.S.A. 79-2938 and 79-2939. See Attorney General Opinions No. 80-6 and 92-24, copies attached. Thus the provisions of K.S.A. 79-2938 and 79-2939 do not apply to issuance of no-fund warrants under K.S.A. 24-133. K.S.A. 24-133 does specifically incorporate the provisions of K.S.A. 79-2940 that deal with the manner and form in which no-fund warrants are to be issued, registered, redeemed and bear interest, but the mere mention of K.S.A. 79-2938 and 79-2939 in K.S.A. 79-2940 does not bring the requirements of those two statutes into K.S.A. 24-133. Thus there is no specific notice requirement for issuance of no-fund warrants under K.S.A. 24-133. Similarly, in answer to the third question raised, there is no dollar limit on the amount of no-fund warrants that may be issued.

The final question raised is whether, in the absence of any dollar limitation, an appropriation in an excessive amount could be deemed confiscatory and without due process. K.S.A. 24-133 lists the types of emergencies for which no-fund warrants may be issued under that statute. Whether a particular amount is excessive will depend on the circumstances; i.e. the project to be funded and the going rate for such a project. If the landowners in the drainage district believe the governing body of the district has exceeded its authority in issuing no-fund warrants, those individuals may seek an injunction or damages through the courts. Alternatively, the legislature may provide by statute for specific notice and hearing requirements and limitations on the dollar amounts such as those prescribed in K.S.A. 79-2938 and 79-2939.

Please note that this is an informal opinion and therefore does not have the same precedential value as a formal opinion.

Very truly yours,


Robert T. Stephan
Attorney General of Kansas

RTS:jlm



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John T. Torbert, CAE

TO: Senate Local Government Committee
Senator Mark Parkinson, Chair

FROM: Anne Spiess
Director of Legislation

DATE: February 21, 1995

RE: SB 118

Thank you Mr. Chairman and Senate Local Government Committee members for the opportunity to testify on SB 118.

The Kansas Association of Counties (KAC) is opposed to new Section 3 of SB 118 which would impose upon all 105 counties in the state a requirement that at least 30 days prior to adopting any resolution or regulation, the board of county commissioners of a county shall prepare a statement on the immediate and long-range impact such resolution or regulation would have upon the cost of housing in the county. Such statement shall be available for public inspection.

This requirement would be burdensome and costly to counties, especially rural counties that have smaller staffs. There is also concern that if this bill were to pass, what industry would be next to come before the Committee to request counties to do similar impact studies for them.

We thank the Committee for their consideration and look forward to working with you on this issue.

*Senate Local Gov't
Submitted 2-21-95
Attachment 6*